

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29D Offenses Against Public Administration
(Approved as amended 3-1-74)

Section 1. Obstructing Government Administration

1. A person is guilty of obstructing government administration if he uses force, violence, intimidation or engages in any criminal act with the intent to interfere with a public servant performing or purporting to perform an official function.

2. This section shall not apply to

A. refusal by a person to submit to an arrest;

B. escape by a person from official custody, as

defined in section ____.

3. Obstructing government administration is a class D crime.

Section 2. Assault on an Officer (Revised 3-1-74)

1. A person is guilty of assault on an officer, if he has been taken into custody by a law enforcement officer and he commits an assault on such officer.

2. As used in this section, "assault" means the crime defined in section 7 of chapter 22. For purposes of subsection 1, a law enforcement officer takes another person into custody when he exercises physical control over that person's freedom of movement, or is in a position imminently to exercise such control and declares his intention to do so.

3. It is no defense to prosecution under this section that the officer was acting unlawfully in taking the actor into custody, provided he was acting under color of his official authority. It is a defense that the conduct constituting a violation of subsection 1 was engaged in as a response to the use of force by the officer that was clearly and substantially in excess of that declared justifiable under section 7 of chapter 13.

4. Assault on an officer is a class C crime.

Section 3. Hindering Apprehension or Prosecution
(Approved as amended 3-1-74)

1. A person is guilty of hindering apprehension or prosecution if, with the intent to hinder, prevent, or delay the discovery, apprehension, prosecution, conviction or punishment of another person for the commission of a crime, he:

A. harbors or conceals the other person;

B. provides or aids in providing a dangerous weapon, transportation, disguise or other means of avoiding discovery or apprehension;

C. conceals, alters or destroys any physical evidence that might aid in the discovery, apprehension or conviction of such person;

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D. warns such person of impending discovery or apprehension, except that this subsection does not apply to a warning given in connection with an effort to bring another into compliance with the law;

E. obstructs by force, intimidation or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction of such person; or

F. aids such person to safeguard the proceeds of or to profit from such crime.

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 is aggravated murder, murder, or a class A crime. Otherwise, it is one grade less than the charge made or in fact liable to be made against the other person; provided that if such charge is a class D crime, hindering apprehension is a class D crime.

Section 4. Compounding (Approved as amended 3-1-74)

1. A person is guilty of compounding if he intentionally solicits, accepts or agrees to accept, any pecuniary benefit as consideration for refraining from initiating or participating as informant or witness in a criminal prosecution.

2. Compounding is a class D crime.

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29E Arson and Other Property Destruction

Section 1. Aggravated Arson (Approved as amended 3-1-74)

1. A person is guilty of aggravated arson if he intentionally starts, causes, or maintains a fire or explosion that damages any structure which is the property of himself or of another, in conscious disregard of a substantial risk that at the time of such conduct a person may be in such structure.

2. It is no defense to a prosecution under this section that no person was present in the structure.

3. In a prosecution under this section, the requirements of specificity in the charge and proof at the trial otherwise required by law do not include a requirement to allege or prove the ownership of the property.

4. As used in this section "structure" includes but is not limited to a building, tent, lean-to, and a vessel or vehicle adapted for overnight accommodation.

5. Aggravated arson is a class A crime if the fire or explosion causes death or serious bodily injury to any person actually present in the structure. Otherwise it is a class B crime.

Section 2. Arson (Approved as amended 3-1-74)

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

A. on the property of another with the intent to damage or destroy such property; or

B. on his own property or the property of another:

(i) with the intent to enable any person to collect insurance proceeds for the loss caused by the fire or explosion; or

(ii) in conscious disregard of a substantial risk that his conduct will endanger any person or damage or destroy the property of another.

2. In a prosecution under subsection 1B, the requirements of specificity in the charge and proof at the trial otherwise required by law do not include a requirement to allege or prove the ownership of the property. In a prosecution under subsection 1A, it is a defense that the actor believed he had the permission of the property owner to engage in the conduct alleged.

Section 3. Causing a Catastrophe (Approved as amended 3-1-74)

1. A person is guilty of causing a catastrophe if he recklessly causes a catastrophe by explosion, fire, flood, avalanche, collapse of a structure, release of poison, radioactive material, bacteria, virus, or other such force or substance that is dangerous to human life and difficult to confine.

2. As used in this section, "catastrophe" means death or serious bodily injury to ten or more people or substantial damage to five or more structures, (as defined in section 1.)

3. Causing a catastrophe is a class A crime.

Section 4. Failure to Control or Report a Dangerous Fire

Approved 3-1-74

Section 5. Aggravated Criminal Mischief

Approved 3-1-74.

Section 6. Criminal Mischief (Approved as amended 3-1-74)

1. A person is guilty of criminal mischief if, intentionally or knowingly, he

A. damages or destroys the property of another, having no reasonable ground to believe that he has a right to do so; or knowingly damages or destroys property with the intent to enable any person to collect insurance proceeds for the loss caused; or

B. damages, destroys, or tampers with property of a law enforcement agency, fire department, or supplier of gas, electric, steam, water, transportation, sanitation, or communication services to the public, having no reasonable ground to believe that he has a right to do so, and by such conduct recklessly creates a risk of interruption or impairment of services rendered to the public.

2. Criminal Mischief is a class D crime.

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Chapter 29G Fraud

Section 1. Deceptive Business Practices

1. A person is guilty of deceptive business practices if, in the course of engaging in a business, occupation, or profession, he intentionally

A. uses or possesses with the intent to use, a false weight or measure, or any other device which is adjusted or calibrated to falsely determine or measure any quality or quantity; or

B. sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

C. takes more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure; or

D. sells, offers, or exposes for sale any commodity which is adulterated or mislabelled; or

E. sells, offers or exposes for sale a motor vehicle on which the speedometer or odometer has in fact been turned back, adjusted or replaced so as to understate its actual mileage; or

F. sells, offers or exposes for sale a motor vehicle on which the manufacturer's serial number has in fact been removed or obscured; or

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G. makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons, in connection with the promotion of his business, occupation or profession or to increase the consumption of specified property or service; or

H. offers property or service, in any manner including advertising or other means of communication, as part of a scheme or plan with the intent not to sell or provide the advertised property or services (i) at all, or (ii) at the price of the quality offered, or (iii) in a quantity sufficient to meet the reasonably expected public demand unless the advertisement or communication states the approximate quantity available; or

I. conducts, sponsors, organizes or promotes a publicly exhibited sports contest with the knowledge that he or another person has tampered with any person, animal or thing that is part of the contest, with the intent to prevent the contest from being conducted in accordance with the rules and usages purporting to govern it or with the knowledge that any sports official or sports participant has accepted or agreed to accept any benefit from another person upon an agreement or understanding that he will thereby be influenced not to give his best efforts or that he will perform his duties improperly.

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2. It is a defense to a prosecution under subsection 1G and subsection 1H that a television or radio broadcasting station, or a publisher or printer of a newspaper, magazine or other form of printed material, which broadcasts, publishes or prints a false, misleading advertisement did so without knowledge of the advertiser's intent.

3. As used in this section:

A. "adulterated" means varying from the standard of composition or quality prescribed for the substance by statute or by lawfully promulgated administrative regulation, or if none, as set by established commercial usage;

B. "mislabeled" means having a label varying from the standard of truth and disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation, or if none, as set by established commercial usage.

4. Deceptive business practices is a misdemeanor.

Comment

Source: This section is from the Proposed Criminal Code of Massachusetts, chapter 266, section 32.

Section 2. Defrauding a Creditor

1. A person is guilty of defrauding a creditor if

A. he destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, as defined in section 1-201(37) of Title 11, with the intent to hinder enforcement of that interest; or

B. knowing that proceedings have been or are about to be instituted for the appointment of an administrator, he

(1) destroys, removes, conceals, encumbers, transfers or otherwise deals with any property with a purpose to defeat or obstruct the claim of any creditor; or

(2) presents to any creditor or to an administrator, orally or in writing, any false statement relating to the debtor's estate, knowing that a material part of such statement is false.

2. As used in this section "administrator" means an assignee or trustee for the benefit of creditors, a conservator, a liquidator, a receiver or any other person entitled to administer property for the benefit of creditors.

3. Defrauding a creditor is a class D crime.

Comment

Source: Subsection 1 is patterned on the New Hampshire Criminal Code, section 638:9. Subsection 2 is from the Proposed Criminal Code of Massachusetts, chapter 266, section 37(b).

Section 3. Misapplication of Property

1. A person is guilty of misapplication of property if he deals with property that has been entrusted to him as a fiduciary, or property of the government or of a financial institution, in a manner which he knows is a violation of his duty and which involves a substantial risk of loss to the owner or to a person for whose benefit the property was entrusted.

2. As used in this section

A. "fiduciary" includes any person carrying on fiduciary functions on behalf of an organization which is a fiduciary;

B. "financial institution" and "government" have the meanings provided in subsection 4 of section 8 of chapter 25.

3. Misapplication of Property is a class D crime.

Comment

Source: This section is taken from the New Hampshire Criminal Code, section 638:11.

Section 4. Private Bribery

1. A person is guilty of private bribery if

A. he offers, gives or agrees to give any benefit upon:

(i) an employee or agent with the intention to influence his conduct adversely to the interest of the employer or principal of the agent or employee; or

(ii) a hiring agent or an official or employee in charge of employment upon agreement or understanding that a particular person, including the actor, shall be hired, retained in employment or discharged or suspended from employment; or

(iii) a fiduciary with the intent to influence him to act contrary to his fiduciary duty; or

(iv) a sports participant with the intent to influence him not to give his best efforts in a sports contest; or

(v) a sports official with the intent to influence him to perform his duties improperly; or

B. he knowingly solicits, accepts or agrees to accept any benefit, the giving of which would be criminal under subsection 1A.

2. Private bribery is a class D crime.

Comment

Source: This section is adapted from the Proposed Criminal Code of Massachusetts, chapter 266, sections 34 and 35.

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TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 12 De Minimis Infractions

1. The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:

A. Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or

B. Did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or

C. Presents such other extenuations that it cannot be reasonably be regarded as envisaged by the legislature in defining the crime.

2. The court shall not dismiss a prosecution under subsection 1~~0~~ without filing a written statement of its reasons.

Comment

Source: This section is taken from the Hawaii Penal Code of 1973, section 236.

Ch. 29D, sec 5-6, Escape

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TITLE D1 GENERAL PRINCIPLES

Chapter 11 Preliminary

Section 12 De Minimis Infractions (Approved as amended 3-14-74)
(Original page 11-17)

1. The court may dismiss a prosecution if, upon notice to the prosecutor and opportunity to be heard, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds the defendant's conduct:

A. was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the crime; or

B. did not actually cause or threaten the harm sought to be prevented by the law defining the crime or did so only to an extent too trivial to warrant the condemnation of conviction; or

C. presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in defining the crime.

2. The court shall not dismiss a prosecution under this section without filing a written statement of its reasons.