

MAINE STATE LEGISLATURE

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MAINE
CRIMINAL LAW REVISION COMMISSION

INTRODUCTION

PARTICIPANTS

AUTHORIZATION

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TO ACCOMPANY

PROPOSED MAINE CRIMINAL CODE

AUGUSTA, MAINE
JANUARY, 1975

INTRODUCTION

During the past two decades every state in the union, save one, as well as the federal government, has been rewriting its criminal laws. More than half of the states have already enacted new penal codes, while the others are at various stages of drafting or adopting.

This proposed Maine Criminal Code represents the first time in the history of our state that the criminal laws of Maine have been rewritten in a systematic fashion. Previous efforts failed for lack of adequate state funding.

Recognition should therefore be given to the Maine Law Enforcement Planning and Assistance Agency whose grant, under the Safe Streets Act, together with legislative funds made this revision possible.

Beginning with its organizational meeting April 7, 1972, the Commission had 45 working sessions with Chief Counsel Sanford J. Fox.

In its work the Commission was not guided by some Northern Star-like philosophy. Rather, it sought on a case by case basis to find practical approaches to meeting the needs of today.

With the divergent views and backgrounds represented on the Commission it would be idle to pretend that there was unanimity on all of the difficult issues decided by the Commission. There was not. But there was give and take and accommodation to the views of other members until it would be fair to say that the members felt that the revision as a whole represented a reasonable balance between compassion for the offender and a concern for the interests of society.

In the process of making these hard choices it was necessary to make arbitrary selections and decisions. The Commission might be hard put to say exactly why the line had to be drawn where we drew it. It represented our best collective judgment at the time. Therefore it must follow that there is no magic in where we drew the line. But the warning must be given that an effort towards wholesale upgrading or downgrading of penalties would, in our judgment, make for a code which would be unduly harsh or permissive.

In seeking to make the state's criminal laws "as rational and just as law can be" the Commission has relied, at times, on the deliberations in other states where the penal laws revision has preceded the Maine effort, using as models for some provisions of the Code the law of this or that state. At the same time, the Commission has left intact those parts of the existing Maine law where the rules have served the State's interests well over the years.

One of the central accomplishments of the new Codes, including the Maine Code, is the articulation of vitally important rules of law that have traditionally been left unexpressed by legislative enactments and only incompletely developed by the process of judicial decisions. The first three chapters of the Code represent examples of this. Thus in chapter 1 there are rules for determining what the authority of the State of Maine is regarding criminal conduct that is partly accomplished within the state and partly in another state, a body of rules whose importance has increased significantly as interstate travel has become so commonplace. Similarly, in chapter 3 the Code provides

a means of answering such important but hitherto bypassed questions as when does a mistake excuse what would otherwise be punishable conduct? What is the effect of the victim's consent to crime? When can one person justly be held accountable for the criminal behavior of another? Issues of no lesser importance are set forth in the third chapter where the Commission presents its recommendations on settling such problems as when may a law enforcement officer shoot in order to make an arrest? What force may legally be used to defend one's property? What authority to use force is to be granted as a matter of self-defense? What circumstances justify use of force by a bus driver or a train conductor?

The general principles in these early chapters apply to all of the crimes defined in the Code, and precisely because they are general principles, they are made to apply to crimes defined in all other parts of the Maine statutes as well.

The same general scope is provided for Part III of the Code in which the sentencing laws are found. It would be both impractical and confusing to have one set of rules for sentencing govern the crimes defined in the Code, and another distinctively different set apply to crimes defined elsewhere in the statutes. In addition to being of general applicability, the sentencing system provided for in the Code follows the approach of the Model Penal Code and all the other revisions by changing the structure by which the legislature determines the penalties it authorizes for each offense. At the present time, the criminal statutes of Maine each have sentencing provisions; that is, one offense may be punishable by 30 days imprisonment, another by 11 months, another by 3 years, etc. There are, in fact, more than 60 such distinctive sentencing provisions in the statutes. In view of the fact that a major function of this particular part of penal legislation is to express a scale of seriousness and a sense that the penalty must preserve some element of proportionality between the gravity of the harm that is done and the severity of the penalty that is extracted for doing it, it seems clear that the function has been lost over the years. The law, as a whole, at present represents not a considered legislative judgment on this issue, but a process of ad hoc enactment that has made such a judgment an impossibility.

In order to permit the legislature to address the issue of seriousness, and to provide a structure whereby future legislatures may enact new criminal statutes which express their own understanding of what is more and what is less serious, the Code sets up a classification system. All criminal statutes are allocated to one of five sentencing classes, each of which has its own penalty limits. Thus the legislative judgment can rationally be exercised to declare that any particular offense is more serious than the offenses in one class, but less serious than the offenses in another. A choice from among five classes represents what the Commission considers to be the limits of rational choice.

The two most serious criminal homicides are outside of this classification scheme and are provided their own distinctive penalties. The classifications do not rely on the traditional terms "felony" and "misdemeanor" since they function largely as perjoratives and add nothing to the effort to decide on the relative seriousness of prohibited behavior.

Another change proposed in the sentencing system is the requirement that persons sentenced to imprisonment be confined for a definite period, rather than for the indeterminate term now characteristic of the law. Release will no longer depend on parole board decisions but on the willingness of the prisoner to earn the "good time" deductions authorized by law. Educational, vocational and other programs may still be offered prisoners, but the realization that there is no known program that can act as a "cure" for criminality makes it irrational to rely on program participation as some sign of rehabilitation.

The bulk of the Code is concerned not with the general principles of the sentencing system, but with the definition of offenses. The major impact of these provisions is in the direction of simplifying the law. One way this is accomplished is by having the definitions uniformly use only a handful of terms to describe the culpable mental state that is an essential element of the crimes. These terms are, moreover, carefully defined in the Code, so that the definition of crime will no longer turn on deciphering the meaning of such traditional terms as "maliciously," "fraudulently," "corruptly" etc. On the whole, this Code relies much more on providing definitions of key terms than does traditional law, thus permitting a more straightforward description of the elements of particular crimes. Many of the crimes, especially the more serious ones such as the homicides, thefts and the sex offenses, are substantively quite similar to the present law.

The Code also contains many crimes that are new to Maine law, such as are provided in the forgery, bribery and perjury chapters. The effort here has been to maintain the integrity of such things as writings, official statements and government processes on a wider scale than traditional law has reached. These chapters also exemplify a central theme that has run through the work to define offenses. That is the need to distinguish behavior that is merely undesirable from behavior that is sufficiently threatening to require the specialized effort of the criminal law to prevent it. Thus it is clear that outright bribery is properly a subject for the criminal law, while careless mistakes of public officials are not. There is a broad range of official wrongdoing in between that calls for difficult judgments as to whether penal or other methods of control are called for. The same problem is presented regarding the law of theft where it is clear that only **some** instances of dealing with the property of another should be penalized.

In making these judgments the Commission has been keenly aware that the penal law can become, and in some respects already is, badly over-extended. When the law reaches such a state it tends to squander precious and limited social assets such as law enforcement and court resources. Thus to the extent that laws which prohibit fornication, social gambling, and the like are in fact enforced, other laws dealing with more serious offenses necessarily cannot be. When the laws are not enforced, the whole system is undermined since it becomes quite clear that not everything in the law is to be taken seriously. Thus one of the tasks involved in defining crime has been to identify these cases and to restrict the law to instances where enforcement is to be encouraged and the prohibitions to be taken as representative of community judgments that are widely and strongly held. In the course of making

decisions of this sort the Commission has recommended dropping from the penal law those prohibitions that do not meet these criteria, including the prohibition against possession of marijuana for one's personal use.

I would like to express our appreciation to our Chief Counsel, Professor Sanford J. Fox, for his careful work and thoughtful presentations to the Commission. As Chairman, I thank the members of the Commission and the Consultants for their faithful attendance and participation which meant taking time away from a busy law practice, family activities or a crowded court docket, and often meant traveling long distances to attend meetings. I hope that the results will have been worth the effort.

Now, I would urge the Bench, the Bar, interested civic groups and all concerned citizens to subject the proposed Code to scrutiny, and discussion. Please direct specific comments to the Commission Secretary, State Law Library, Augusta.

Jon A. Lund, Chairman
Criminal Law Revision Commission

CRIMINAL LAW REVISION COMMISSION

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- Richard S. Cohen, Deputy Attorney General
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- *Caroline Glassman, Attorney, Vice-Chairman
- *Edith L. Hary, State Law Librarian, Secretary-Treasurer
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Raymond Nichols, Director, Probation and Parole
Robert E. Wagner, Chief, Bath Police Department

CHAPTER 147

AN ACT to Create a Commission to Prepare a Revision of the Criminal Laws.

Sec. 1. Commission; duties. A special commission shall be constituted and appointed to supervise the preparation, in final legislative draft form, of a proposed Criminal Code for the State of Maine, such proposed code to be presented to the regular session of the 107th Maine Legislature. Such proposed Criminal Code shall include and consist of a complete revision, redraft and rearrangement of all sections of the Revised Statutes pertaining to the criminal law. Such proposed Criminal Code may, without limitation, incorporate such necessary repealers, amendments and modifications of existing laws as, in the judgment of such commission, are necessary and appropriate to accomplish such purposes. Such proposed code may include such new or modified provisions as, in the judgment of the commission, will best serve the interests of the people of the State, and the commission shall give due consideration to the criminal laws of other states, and the requirements for enforcement thereof. Such commission shall employ a chief counsel, and, subject to his recommendations, such additional counsel as may be required, to perform the necessary research and drafting of such code, the chief counsel to meet the requirements as set forth. Such commission shall hold such public hearings as may be deemed necessary to acquaint the public. It is the purpose and intent hereof to provide such commission with sufficient authority and funds to enable it to present to the Maine Legislature a fully modern, integrated and consistent criminal code.

Sec. 2. Membership. The membership of the commission shall consist of not less than 11 nor more than 14 persons. The Governor shall appoint the members of the commission as follows: Four members shall be members of the bar, 2 of whom shall have been active in the trial of criminal cases. Two members shall be from the field of mental health and corrections, one of whom shall be the Warden of the Maine State Prison. At least 4 shall be qualified by reason of common sense and broad experience in everyday affairs, as

representative of the public, which may include persons within the foregoing categories. The Governor shall designate 4 consultants to the commission, who shall be active or retired members of the judiciary, at least one of whom shall be a member of the Supreme Judicial Court and one member shall be from the Superior Court. The Attorney General shall be a member of the commission ex officio. Members shall serve for a term of 2 years and may be reappointed by the Governor. In the event of the death or resignation of any member, the vacancy for his unexpired term shall be filled by the Governor. Eight members of the commission shall constitute a quorum.

Sec. 3. Meetings. The said commission shall be appointed promptly upon enactment hereof, and the Governor shall notify all members of the time and place of the first meeting. At that time the commission shall organize, elect a chairman, vice-chairman and secretary-treasurer, adopt rules as to the administration of the commission and its affairs. The commission shall maintain minutes of its meetings and such financial records as may be required by the State Auditor and shall report periodically its progress to the Governor.

Sec. 4. Chief counsel. The commission shall contract a chief counsel who need not be a resident of this State, who shall have the responsibility for legal research and drafting required in connection with the preparation of the proposed Criminal Code, under the direction and supervision of the commission. No person shall be employed as chief counsel who shall not, by virtue of prior training, experience, ability and reputation, have clearly demonstrated the ability to perform the tasks to be assigned to him by the commission.

Sec. 5. Reimbursement of expenses. The members of the commission shall serve without compensation, but may be reimbursed for their reasonable expenses in attending meetings, procuring supplies, correspondence and other related and necessary expenditures.

Sec. 6. Federal funds. The commission shall be authorized on behalf of the State to accept federal funds and may seek the advice and assistance of the Law Enforcement Planning and Assistance Agency in carrying out its duties.

Sec. 7. Appropriation. There is appropriated from the Unappropriated Surplus of the General Fund the sum of \$10,000 for the fiscal year ending June 30, 1973 to carry out the purposes of this Act.

Effective September 23, 1971

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