## CHAPTER 27

## ROBBERY

§ 651. Aggravated robbery

1. A person is guilty of aggravated robbery if, in the course of committing robbery, as defined in section 652:

A. He intentionally inflicts or attempts to inflict bodily injury or uses physical force on another; or

B. He is armed with a dangerous weapon.

2. Aggravated robbery is a Class A crime.

Comment*

This section and the one following, Robbery, follow the Maine statutes (Title 17, sections 3401, 3401-A and 3402) and the common law conception of robbery as an aggravated form of theft. This section seeks to identify the most serious forms of aggravation in subsection 1. In subsection 1, paragraph A the measure is the amount of force that is used or attempted in the theft, while in subsection 1, paragraph B any force or theft will constitute the aggravating circumstances, provided the actor was armed.

The next following section, Robbery, is graded as a less serious crime and identifies as the aggravating circumstances of the theft, less destructive use of force.

§ 652. Robbery

1. A person is guilty of robbery if he commits theft and at the time of his actions:

A. He threatens to use force against any person present with the intent

(1) to prevent or overcome resistance to the taking of the property, or to the retention of the property immediately after the taking; or

(2) to compel the person in control of the property to give it up or to engage in other conduct which aids in the taking or carrying away of the property; or

B. He recklessly inflicts bodily injury on another.

2. Robbery is a Class B crime.

Comment*

See comments to section 651.

## CHAPTER 29

## FORGERY AND RELATED OFFENSES

§ 701. Definitions

As used in sections 702 and 703:

1. A person "falsely alters" a written instrument when, without the authority of anyone entitled to grant it, he changes a written instrument, wheth-

er it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;

2. A person "falsely completes" a written instrument when, by adding, inserting or changing matter, he transforms an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that such complete instrument appears or purports to be in all respects an authentic creation of, or fully authorized by, its ostensible author, maker or drawer;

3. A person "falsely makes" a written instrument when he makes or draws a complete written instrument in its entirety, or an incomplete written instrument, which purports to be an authentic creation of its ostensible author, maker or drawer, but which is not such, either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof;

4. "Written instrument" includes any token, coin, stamp, seal, badge, trademark, credit card, other evidence or symbol of value, right, privilege or identification, and any paper, document, or other written instrument containing written or printed matter or its equivalent;

5. "Complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof; and

6. "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

Comment*

The definition of written instrument is derived from the Hawaii Penal Code, section 850(1); the others are from the Proposed Criminal Code of Massachusetts, chapter 266, sections 1(b), 1(c), and 26(c).

The Maine statutes do not now contain formal definitions such as those contained in this section. There are, however, fragments of analogous definitions to be gleaned from various sources. Title 17, section 1502, for example, punishes any person who, with intent to defraud, "erases or obliterates" a writing or who "alters" any writing "in a material matter." Judicial opinions may also supply some of the definitions used in the present law. See, for example, **State v. Talbot,** 160 Me. 103, 106-107 (1964) where reference is made to dictionary means of "alter" and "forge." Definitions of the things which may be the subject of the crime of forgery are contained in the various statutes dealing with that crime. Title 17, section 1501, for example, speaks of "any public record or proceeding filed or entered in any court" and "any charter, deed, will, testament, bond, writing obligatory, power of attorney, letter of credit," etc. Forgery is also defined outside of Title 17. See, for example, Title 6, section 203 which punishes

forgery of certain aeronautics certifications; Title 32, section 4403 creates the offense of forgery of permits to cut Christmas trees.

The definitions in this section are designed to permit comprehensive treatment of forgery in the ensuing two sections. By setting forth the definitions separately, undue complexity is avoided in the sections which define and grade the forgery offenses. The definitions provided here do not appear to be in conflict with the present law, except that "falsely completes" provides the basis for defining forgery in a way that would conflict with dictum in **Abbott v. Rose**, 62 Me. 194, 201 (1873) to the effect that fraudulently filling in the blanks in an incomplete instrument would not be forgery.

§ 702. Aggravated forgery

1. A person is guilty of aggravated forgery if, with intent to defraud or deceive another person or government, he falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument, and the instrument is:

A. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or governmental instrumentality;

B. Part of an issue of stocks, bonds or other instruments representing interests in or claims against an organization or its property;

C. A will, codicil or other instrument providing for the disposition of property after death;

D. A public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employee; or

E. A check whose face value exceeds $5,000.

2. Aggravated forgery is a Class B crime.

Comment*

This section is patterned on the Proposed Criminal Code of Massachusetts, chapter 266, sections 26(a) and 27(b) and (d). The basic forgery statutes are in Title 17, sections 1501 through 1507.

Two forms of forgery are provided, this section and the one following. They are distinguished largely by the nature of the thing forged. Subsection 1, paragraph E serves to authorize a higher penalty for forging of a large check.

§ 703. Forgery

1. A person is guilty of forgery if, with the intent to defraud or deceive another person or government, he:

A. Falsely makes, completes or alters a written instrument, or knowingly utters or possesses such an instrument; or

B. Causes another, by deception, to sign or execute a written instrument, or utters such an instrument.

2. Forgery is a Class D crime.

Comment*

This section is derived from the Proposed Criminal Code of Massachusetts, chapter 266, section 28, and the Hawaii Penal Code, section 856.

The basic statutes are cited in the Comment to section 702. It has been held that fraudulently obtaining the signature of a person to a document is a forgery of that document. **State v. Shurtliff,** 18 Me. 368 (1841).

This section punishes all forgery that is not described in section 702. In addition, there is provision for the case of obtaining a signature by fraud, as is the present law under **Shurtliff.**

§ 704. Possession of forgery devices

1. A person is guilty of possession of forgery devices if:

A. He makes or possesses with knowledge of its character, any plate, die or other device, apparatus, equipment or article specifically designed or adapted for use in committing aggravated forgery or forgery; or

B. He makes or possesses any device, apparatus, equipment, or article capable of or adaptable to use in committing an aggravated forgery or forgery, with the intent to use it himself, or to aid or permit another to use it for purposes of committing aggravated forgery or forgery.

2. Possession of forgery devices is a Class E crime.

Comment*

This section is a modification of the Hawaii Penal Code, section 854.

Title 17, section 1508 presently provides punishment for conduct of this sort.

The two parts of subsection one differ from each other on the matter of whether the thing possessed is or is not specifically designed to commit forgery, e.g., plates to counterfeit stamps. If it is, then it need only be proved that the actor knew of this. Subsection 1, paragraph B, on the other hand, relates to things usable to commit forgery, but are not specifically designed to that end, e.g., a printing press. In these latter cases, the prosecution must prove that there was an intent, accompanying the possession, to put the thing to use in a forgery.

§ 705. Criminal simulation

1. A person is guilty of criminal simulation if:

A. With intent to defraud, he makes or alters any property so that it appears to have an age, rarity, quality, composition, source or authorship which it does not in fact possess; or with knowledge of its true character and with intent to defraud, he transfers or possesses property so simulated; or

B. In return for a pecuniary benefit;

(1) he authors, prepares, writes, sells, transfers or possesses with intent to sell or transfer, an essay, term paper or other manuscript knowing that it will be, or believing that it probably will be, submitted by another person in satisfaction of a course, credit or degree requirement at a university or other degree, diploma or certificate-granting educational institution; or

(2) he takes an examination for another person in satisfaction of a course, credit or degree requirement at a university or other degree, diploma or certificate-granting educational institution;

C. He knowingly makes, gives or exhibits a false pedigree in writing of any animal; or

D. With intent to defraud and to prevent identification, he alters, removes or obscures the manufacturer's serial number or any other distinguishing identification number, mark or symbol upon any automobile, motorboat, aircraft or any other vehicle or upon any machine, firearm or other object.

2. Criminal simulation is a Class E crime.

Comment*

This section is a modification of the Proposed Massachusetts Criminal Code, chapter 266, section 33. There does not appear to be any present Maine statute dealing specifically with this subject. Title 29, section 2185 prohibits transacting in a motor vehicle whose identification symbols have been tampered with, but does not prohibit merely the tampering. This section is designed to prevent specific kinds of fraud that are perpetrated by passing off something as what it is not.

§ 706. Suppressing recordable instrument

1. A person is guilty of suppressing a recordable instrument if, with intent to defraud anyone, he falsifies, destroys, removes or conceals any will, deed, mortgage, security instrument or other writing for which the law provides public recording, whether or not it is in fact recorded.

2. Suppressing a recordable instrument is a Class E crime.

Comment*

This section is taken from the New Hampshire Criminal Code, section 638:2.

Title 18, section 10 prohibits suppressing a will. In addition, Title 1, section 452 punishes the removal or destruction of records, documents or instruments from their official repositories in the State Capitol, or in the hands of certain state officials.

This section provides a general prohibition against conduct which aims at falsifying public records. So long as there is the intent to defraud, it is

criminal under this section that certain unauthorized conduct takes place in regard to things which are, or could be, part of a public record.

§ 707. Falsifying private records

1. A person is guilty of falsifying private records if, with intent to defraud any person, he:

A. Makes a false entry in the records of an organization, or

B. Alters, erases, obliterates, deletes, removes or destroys a true entry in the records of an organization; or

C. Omits to make a true entry in the records of an organization in violation of a duty to do so which he knows to be imposed on him by statute; or

D. Prevents the making of a true entry or causes the omission thereof in the records of an organization.

2. Falsifying private records is a Class E crime.

Comment*

This section is a modified version of the Hawaii Penal Code, section 872. There does not now appear to be a statute dealing with the subject of this section. It is designed to prevent frauds by prohibiting the manipulation of private records in a way that is likely to produce a fraudulent transaction. The requirement that the state prove the intention to defraud serves to prevent the section from reaching simple, or even neglignt or reckless, mistakes.

§ 708. Negotiating a worthless instrument

1. A person is guilty of negotiating a worthless instrument if he intentionally issues or negotiates a negotiable instrument knowing that it will not be honored by the maker or drawee.

2. It shall be presumed that the person issuing or negotiating the instrument knew that it would not be honored upon proof that:

A. The drawer had no account with the drawee at the time the instrument was negotiated; or

B. Payment was refused by the drawee for lack of funds upon presentation within a reasonable time after negotiation or issue, as determined according to Title 11, section 3-503, and the drawer failed to make good within 5 days after actual receipt of a notice of dishonor, as defined in Title 11, section 3-508.

3. As used in this section, the following definitions apply:

A. "Issue" has the meaning provided in Title 11, section 3-102, subsection (1), paragraph (a);

B. "Negotiable instrument" has the meaning provided in Title 11, section 3-104;

C. "Negotiation" and its varients have the meaning provided in Title 11, section 3-202.

4. Negotiating a worthless instrument is a Class D crime.

Comment*

This section is patterned on the Hawii Penal Code, 1973, section 857. Title 17 contains two sections on this subject, sections 1605 and 1606.

This section of the code punishes passing bad checks or other worthless negotiable paper. The definitions are taken from the UCC provisions in Title 11. It is not necessary that any property be obtained in return.

## CHAPTER 31

## OFFENSES AGAINST PUBLIC ADMINISTRATION

§ 751. 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 755.

3. Obstructing government administration is a Class D crime.

Comment*

This section is based on the New Hampshire Criminal Code, section 642:1. Chapter 95 of Title 17 contains six sections on obstructiong justice.

This section is a generalized form of the statutes now in Title 17. The limitations in subsection 2 are designed to insure that in the subjects mentioned, criminality is determined by the statutes specifically dealing with those particular issues.

§ 752. Assault on an officer

1. A person is guilty of assault on an officer, if:

A. He has been taken into custody by a law enforcement officer and he commits an assault on such officer; or

B. Being in custody in a penal institution or other facility pursuant to an arrest or pursuant to a court order, he commits an assault on a member of the staff of the institution or facility.

2. As used in this section "assault" means the crime defined in chapter 9, section 207. 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.

Comment*

In Title 17, section 2952 punishment is provided for an assault on an officer. This section of the code defines the offense more narrowly, and

creates a special crime only when the actor is in the custody of the officer. Subsection 2 includes two important rules: one that the question of whether this particular crime has been committed does not depend on whether there was some defect in the legality of the arrest. The policy here is to discourage people in custody from a violent response to what they see as an illegal arrest. The second rule is that if, in making the arrest, the officer uses more force than the law allows him, the victim of that excessive force commits no crime if he defends himself from it.

§ 753. Hindering apprehension or prosecution

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; or

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

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

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; or

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 was criminal homicide in the first or 2nd degree, 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 E crime, hindering apprehension is a Class E crime.

Comment*

This section is taken from the Proposed Criminal Code of Massachusetts, chapter 268, section 11. Title 15, section 342 provides a general definition of an accessory after the fact. In addition, section 903 of Title 17 contains a similar offense.

This section of the code spells out what is described in general terms in present law as "harbors, conceals, maintains or assists." In addition, this section prohibits obstructing others who are in pursuit of the principal offender. Subsection 1, paragraph F also reaches the person who aids the criminal by hiding the loot, converting it into currency, or otherwise assists

in making the original enterprise profitable. This subsection goes beyond the common law, and the present Maine statute, which required that the assistance be rendered directly to the offender.

§ 754. Compounding

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

2. Licensed or certified persons or institutions rendering treatment or services in connection with problems associated with the abuse of drugs pursuant to Title 32, sections 2595, 3292, 3817 and 4185-A and Title 22, section 1823 shall be exempt from the necessity of disclosure under this section of "possession" or "use" violations of chapter 45, known to such licensed or certified person or institution to have been committed by the person receiving treatment or services for problems associated with the abuse of drugs.

3. Compounding is a Class E crime.

Comment*

This section is a modification of the Hawaii Penal Code, section 1013. Two sections of Title 17 are relevant. Section 901 defines a crime similar to the one in this section of the code. Section 902 punishes failure to disclose knowledge of a crime — the common law's misprision of a felony.

This section does not include the misprision offense in section 902 of Title 17. It otherwise follows the present elements of section 901, except that an affirmative defense is provided for the person who takes what he honestly believes is due him as a result of the criminal conduct.

§ 755. Escape

1. A person is guilty of escape if, without official permission, he intentionally leaves official custody, or intentionally fails to return to official custody following temporary leave granted for a specific purpose or a limited period.

2. In the case of escape from arrest, it is a defense that the arresting officer acted unlawfully in making the arrest. In all other cases, it is no defense that grounds existed for release from custody that could have been raised in a legal proceeding.

3. As used in this section, "official custody" means arrest, custody in, or on the way to or from a jail, police station, house of correction, or any institution or facility under the control of the Bureau of Corrections, or under contract with the bureau for the housing of persons sentenced to imprisonment, the custody of any official of the bureau, or any custody pursuant to court order. It does not include custody of persons under 18 years of age unless such person has been administratively transferred to custody in the men's or women's correctional center, or the custody is as a result of a finding of probable cause made under the authority of Title 15, section 2611, subsection 3 or is in regard to offenses over which juvenile courts have no

jurisdiction, as provided in Title 15, section 2552. A person on a parole or probation status is not, for that reason alone, in "official custody" for purposes of this section.

4. Escape is a Class B crime if it is committed by force against a person, threat of force, or while the defendant is armed with a dangerous weapon. Otherwise it is a Class C crime.

Comment*

This section is an adaptation of the Proposed Criminal Code of Massachusetts, chapter 268, section 13. There are presently a number of statutes dealing with escape in Titles 14, 34 and 17.

The aim of this section is to consolidate the diverse statutes now dealing with escape from penal custody. Like present law, the penalty is higher if the offense is committed with a substantial risk to life. Subsection 2 reflects a policy of discouraging "self-help" when the prisoner deems his custody to be illegal. The definition in subsection 3 includes an exemption for children within juvenile court jurisdiction in the belief that escalation of the penalties they face ought not to be automatically required. It is, of course, open for administrative sanctions to be imposed in the case of such runaways.

§ 756. Aiding escape

1. A person is guilty of aiding escape if, with the intent to aid any person to violate section 755:

A. He conveys or attempts to convey to such person, any contraband;

B. He furnishes plans, information or other assistance to such person; or

C. Being a person whose official duties include maintaining persons in official custody, as defined in section 755, subsection 3, he permits such violation, or an attempt at such violation.

2. As used in this section, and in section 757, "contraband" means a dangerous weapon, any tool or other thing that may be used to facilitate a violation of section 755, or any other thing which a person confined in official custody is prohibited by statute or regulation from making or possessing.

3. Aiding escape is a Class C crime, unless the contraband involved in a violation of subsection 1, paragraph A includes a dangerous weapon, in which case it is a Class B crime.

4. A person may not be indicted or charged in an information with both a violation of this section and as an accomplice to a violation of section 755.

Comment*

This section is a modification of the Proposed Criminal Code of Massachusetts, chapter 268, section 14. Several Maine statutes in Title 17 and 34 punish aiding escapes.

This section seeks to consolidate existing law by comprehensively prohibiting the designated sorts of aid given in order to permit another to violate the escape prohibition in section 755.

§ 757. Trafficking in prison contraband

1. A person is guilty of trafficking in prison contraband if:

A. He intentionally conveys contraband to any person in official custody; or

B. Being a person in official custody, he intentionally makes, obtains or possesses contraband.

2. As used in this section "official custody" has the same meaning as in section 755, provided that solely for purposes of subsection 1, paragraph A, it does include the custody of all persons under the age of 18.

3. Trafficking in prison contraband is a Class C crime.

Comment*

This section is aimed at preventing the furnishing of materials that can be used in escapes and disorders within penal institutions. The expanded definition of "official custody" is to permit the prohibition to relate to assisting escapes and disorders in juvenile institutions.

## CHAPTER 33

## ARSON AND OTHER PROPERTY DESTRUCTION

§ 801. Aggravated arson

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.

Comment*

This section is based on section 2-8B1 of S.1, 93d Congress First Session, and the Proposed Criminal Code of Massachusetts, chapter 266, section 3.

There are eight sections in Title 17 covering arson, (161-167). In Title 25, section 2435 states:

> Whoever with intent to injure another causes a fire to be kindled on his own or another's land, whereby the property of any other person is injured or destroyed, shall be punished by a fine of not less than $20 nor more than $1,000 or by imprisonment for not less than 3 months nor more than 3 years.

Section 3752 in Title 17 contains a statute to deal with tramps who build fires on the land of another without consent. Further, section 1401 of Title 12 covers restrictions on out-of-door fires; and section 1402 of Title 24 with limitations of fire insurance recovery.

This section, and the three next following all deal with damaging property by fire or explosion. They are graded as to sentencing class on the basis of the nature of the risk which is presented to life and property by the particular conduct. The basic elements are similar to present law.

§ 802. Arson

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

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

(2) 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 1, paragraph B, 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 1, paragraph A, it is a defense that the actor believed he had the permission of the property owner to engage in the conduct alleged.

3. Arson is a Class B crime.

Comment*

This section is taken from the Proposed Criminal Code of Massachusetts, chapter 266, section 4 and section 2-8B2 of Senate 1, 93d Congress, First Session.

This section is graded on the basis of dangers created solely in order to collect on insurance or in reckless disregard to the dangers posed to other persons or their property. See also Comment to section 801.

§ 803. Causing a catastrophe

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 10 or more people or substantial damage to 5 or more structures, as defined in section 801.

3. Causing a catastrophe is a Class A crime.

Comment*

This section is patterned on section 14.070 of the Proposed Criminal Code for the State of Missouri, 1973.

This section is graded as a Class A crime on the basis of the risk that is consciously created by fire, explosion, etc., and which in fact results in mass death or destruction. If the conduct is done intentionally, it would be murder, or perhaps aggravated murder. See also Comment to section 801.

§ 804. Failure to control or report a dangerous fire

1. A person is guilty of failure to control or report a dangerous fire if:

A. He starts, causes or maintains a fire or explosion, and knowing that its spread would endanger human life or the property of another, he fails to take reasonable measures to put out or control the fire or to give a prompt fire alarm;

B. Knowing that a fire is endangering a substantial amount of property of another, as to which he has an official, contractual, or other legal duty, he fails to take reasonable measures to put out or control the fire or to give prompt fire alarm; or

C. Knowing that a fire is endangering human life, he fails to take reasonable measures to save life by notifying the persons endangered or by taking reasonable measures to put out or control the fire or by giving a prompt fire alarm.

2. Failure to control or report a dangerous fire is a Class D crime.

Comment*

This section is patterned on section 2-8B4 of Senate 1, 93d Congress, First Session. There does not seem to be any Maine statute on this subject

This section imposes affirmative duties on persons who are in a position of responsibility in regard to the harm that might be caused by a fire or explosion. Subsection 1, paragraph A places such a duty on the person who starts a fire, even if it had been started accidentally without fault on his part. Subsection 1, paragraph B relates to persons such as bailees of large amounts of property or hotel managers with whom people entrust their property. The final portion of subsection 1 is broader than the first

two in that all persons who know there to be a fire dangerous to others are obligated to do something to help save those lives.

§ 805. Aggravated criminal mischief

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

A. Damages or destroys property of another in an amount exceeding $1,000 in value, having no reasonable ground to believe that he has a right to do so; or

B. Damages or destroys property in an amount exceeding $1,000 in value, to enable any person to collect insurance proceeds for the loss caused; or

C. Damages, destroys or tampers with the 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 thereby causes a substantial interruption or impairment of service rendered to the public; or

D. Damages, destroys or tampers with property of another and thereby recklessly endangers human life.

2. Aggravated criminal mischief is a Class C crime.

Comment*

This section is patterned on the Proposed Criminal Code of Massachusetts, chapter 266, section 6.

There are presently six statutes in Title 17 dealing with the subject of this section: sections 2351-2355 and 2404.

This section of the Code and the next following deal with damage or destruction of property, and set out a grading scheme which depends partly on the value of the property involved, partly on whether human life is endangered, and partly on whether a great inconvenience to the public at large is caused by the acts of the accused.

§ 806. Criminal mischief

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.

Comment*

This section is a modified version of section 2-8B6 of Senate 1, 93d Congress, First Session.

This section differs from section 805 on the basis of the absence of consideration to the value of damage caused, and on the absence of a requirement that there be in fact an interruption of the public service which the accused tampered with. See also comment to section 805.

## CHAPTER 35

## PROSTITUTION AND PUBLIC INDECENCY

§ 851. Definitions

As used in this chapter:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in sexual intercourse or a sexual act, as defined in chapter 11, section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

2. "Promotes prostitution" means:

A. Causing or aiding another to commit or engage in prostitution, other than as a patron; or

B. In a public place, soliciting patrons for prostitution; or

C. Providing persons for purposes of prostitution; or

D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution; or

E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business; or

F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or

G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby he participates or he is to participate in the proceeds of prostitution.

Comment*

These definitions are adaptations of provisions found in the Hawaii Penal Code 1973, section 1201; the Proposed Criminal Code of Massachusetts, chapter 272, section 4; and the Proposed Criminal Code for the State of Missouri, section 12.010.

Section 3052 of Title 17 provides: "The term 'prostitution' shall be construed to include the offering or receiving of the body for sexual intercourse

for hire and shall be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire." Other definitions are contained in subsections 1 through 6 of section 3051 of Title 17.

This section sets forth definitions that are required for the offenses described in this chapter. The definitions in subsection 2 are particularly important since "promoting prostitution" is the basic element of the crimes set forth in sections 852 and 853.

§ 852. Aggravated promotion of prostitution

1. A person is guilty of aggravated promotion of prostitution if he knowingly:

A. Promotes prostitution by compelling a person to enter into, engage in, or remain in prostitution; or

B. Promotes prostitution of a person less than 18 years old.

2. As used in this section "compelling" includes but is not limited to:

A. The use of a drug or intoxicating substance to render a person incapable of controlling his conduct or appreciating its nature; and

B. Withholding or threatening to withhold a narcotic drug or alcoholic liquor from a drug or alcohol-dependent person. A "drug or alcohol-dependent person" is one who is using narcotic drugs or alcoholic liquor and who is in a state of psychic or physical dependence on both, arising from the use of the drug or alcohol on a continuing basis.

3. Aggravated promotion of prostitution is a Class C crime.

Comment*

This section is patterned on the Proposed Criminal Code for the State of Missouri, section 12.050. It defines an offense encompassed now by Title 17, section 3055-3059.

This is the first of the two sections which will deal with prostitution. Neither one defines prostitution itself as an offense. This present draft seeks to identify the most serious forms of promoting prostitution, leaving the next section to define an offense which is all other means of promoting prostitution.

§ 853. Promotion of prostitution

1. A person is guilty of promotion of prostitution if he knowingly promotes prostitution.

2. Promoting prostitution is a Class D crime.

Comment*

See comment to section 852.

§ 854. Public indecency

1. A person is guilty of public indecency if:

A. In a public place

(1) he engages in sexual intercourse or a sexual act, as defined in chapter 11, section 251; or

(2) he knowingly exposes his genitals to a person under the age of 12, or under circumstances which, in fact, are likely to cause affront or alarm; or

B. In a private place, he exposes his genitals with the intention that he be seen from a public place or from another private place.

2. For purposes of this section "public place" includes, but is not limited to, motor vehicles which are on a public way.

3. Public indecency is a Class E crime.

Comment*

This section is similar to the present prohibition against procuring in Title 17, section 3051, subsection 4 and the crime of indecent exposure defined in Title 17, section 1901. In addition it prohibits public sexual activity where there is no victim save the general affrontery.

## CHAPTER 37

## FRAUD

§ 901. 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;

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

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

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

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, without disclosing the understatement;

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

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;

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

(1) at all;

(2) at the price or of the quality offered;

(3) 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.

2. It is a defense to a prosecution under subsection 1, paragraphs G and H, 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 Class D crime.

Comment*

This section is patterned on the Proposed Criminal Code of Massachusetts, chapter 266, section 3. It is designed to prohibit unfairness in business relations that goes beyond the bounds of accepted sharpness, especially in circumstances where one of the parties to the transaction relies on the honesty of the other. Thus, in subsection 1, paragraph A, the buyer makes his purchase in reliance on the accuracy of the scale; in subsection 1, paragraph D he assumes the label to be truthful, etc. This section also includes prohibitions similar to those in present law, such as the sale of a motor vehicle with an altered serial number described in subsection 1, paragraph F

and Title 29, section 2185 or chicanery with the odometer prohibited by subsection 1, paragraph E and Title 17, section 1609-A.

Subsection 1, paragraphs G and H define an offense relating to false advertising which, together with the defense provided in subsection 2, is similar to that contained in section 1620 of Title 17.

The penalty provided for the sale of adulterated commodities in subsection 1, paragraph D is now found in chapter 111 of Title 17.

§ 902. 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 Title 11, section 1-201, subsection (37), 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 in writing to any creditor or to an assignee for the benefit of creditors, 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 "assignee for benefit of creditors" means a receiver, trustee in bankruptcy or any other person entitled to administer property for the benefit of creditors.

3. Defrauding a creditor is a Class D crime.

Comment*

Subsection 1 of this section is patterned on the New Hampshire Criminal Code, section 638:9 while subsection 2 is derived from the Proposed Criminal Code of Massachusetts, chapter 266, section 37(b). The section as a whole is designed to prevent a form of cheating which is not, in substance, significantly different from theft. It complements the chapter on theft which excludes that offense when a debtor takes what another has only a security interest in. Similar offenses are in Title 17, sections 1613 and 1614.

§ 903. Misuse of entrusted property

1. A person is guilty of misuse of entrusted 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 "fiduciary" includes any person carrying on fiduciary functions on behalf of an organization which is a fiduciary.

3. Misuse of entrusted property is a Class D crime.

Comment*

This section, based on the New Hampshire Criminal Code, section 638:11, reaches wrongful property which would not be theft because it does not involve a permanent deprivation of property. It is designed to prevent the violation of known fiduciary duties which creates a serious risk or loss of the property.

§ 904. Private bribery

1. A person is guilty of private bribery if:

A. He offers, gives or agrees to give any benefit to

(1) 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;

(2) 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;

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

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

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

(6) a person in a position of trust and confidence in his relationship to a 3rd person, with the intention that the trust or confidence will be used to influence the 3rd person to become a customer of the actor, or as compensation for the past use of such influence; or

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

2. Private bribery is a Class D crime.

Comment*

This section is adapted from the Proposed Criminal Code of Massachusetts, chapter 266, sections 34 and 35. Its aim is to protect the integrity of employer-employee relations, and similar relationships, from dishonest abuse in the form of bribery to act against the interests of the employer or beneficiary of a fiduciary duty.

§ 905. Misuse of credit identification

1. A person is guilty of misuse of credit identification if, in order to obtain property or services, he intentionally or knowingly:

A. Presents or uses a credit card which is stolen, forged or cancelled; or

B. Presents a credit or billing number which he is not authorized to use.

2. It is an affirmative defense to prosecution under this section that the defendant believed in good faith that he had a right to present or use the card or number.

3. Misuse of credit identification is a Class D crime.

Comment*

Several sections of Title 17 presently prohibit conduct similar to that described in this section. See, for example, section 1621 (obtaining telephone service by use of a false billing manner); sections 1624-1634 (fraudulent use of credit cards). This section of the Code is designed to consolidate such coverage and provide a general prohibition against obtaining credit fraudulently. No property need change hands for this offense to be committed.

§ 906. Use of slugs

1. A person is guilty of use of slugs if:

A. With intent to defraud, he inserts or deposits a slug in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle; or

B. He makes, possesses or disposes of a slug with intent to enable a person to insert or deposit it in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle.

2. As used in this section, "slug" means an object or article which, by virtue of its size, shape or other quality, is capable of being inserted or deposited as an improper substitute for a genuine coin, bill, pass, key or token in a coin box, turnstile, vending machine or other mechanical or electronic device or receptacle which is designed automatically to offer, provide, assist in providing or permit the acquisition of some property or services in return for the insertion or deposit of a genuine coin, bill, pass, key or token.

3. Use of slugs is a Class D crime.

Comment*

This section is designed to prevent cheating under circumstances where goods or services are mechanically delivered. It broadens and generalizes the offense of use or possession of mutilated coins to obtain transportation on a public vehicle.

## CHAPTER 39
## UNLAWFUL GAMBLING

§ 951. Inapplicability of chapter

Any person licensed by the Chief of the State Police as provided in Title 17, chapter 14, shall be exempt from the application of the provisions of this chapter insofar as his conduct is within the scope of such license.

Comment*

This section is designed to leave intact the policy regarding games of chance enacted by the Legislature in 1973. The provisions of that chapter allow for a limited type of gambling to be controlled primarily through licensing.

§ 952. Definitions

As used in this chapter, the following definitions apply:

1. "Advance gambling activity." A person "advances gambling activity" if, acting other than as a player or a member of the player's family residing with a player in cases in which the gambling takes place in their residence, he engages in conduct that materially aids any form of gambling activity. Conduct of this nature includes, but is not limited to, bookmaking, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. A person also advances gambling activity if, having substantial proprietary control or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits that activity to occur or continue, or makes no effort to prevent its occurrence or continuation.

2. "Bookmaking" means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

3. "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

4. "Gambling." A person engages in gambling if he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. Gambling does not include bona fide business transactions valid under the law of contracts, including but not limited to contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or guaranty and life, health or accident insurance.

5. "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine. However, lottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition.

6. "Lottery" means an unlawful gambling scheme in which:

A. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

B. The winning chances are to be determined by a drawing or by some other method based on an element of chance; and

C. The holders of the winning chances are to receive something of value.

7. "Mutuel" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome or outcomes of a future contingent event or events otherwise unrelated to the particular scheme.

8. "Player" means a person who engages in social gambling solely as a contestant or bettor on equal terms with the other participants therein without receiving or becoming entitled to receive something of value or any profit therefrom other than his personal gambling winnings. "Social gambling" is gambling, or a contest of chance, in which the only participants are players and from which no person or organization receives or becomes entitled to receive something of value or any profit whatsoever, directly or indirectly, other than as a player, from any source, fee, remuneration connected with said gambling, or such activity as arrangements or facilitation of the game, or permitting the use of premises, or selling or supplying for profit refreshments, food, drink service or entertainment to participants, players or spectators. A person who engages in "bookmaking" as defined in subsection 2 is not a "player."

9. "Profit from gambling activity." A person "profits from gambling activity" if, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.

10. "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property, or of any interest therein, or involving extension of a service, entertainment or a privilege of playing at a game or scheme without charge.

11. "Unlawful" means not expressly authorized by statute.

## Comment*

Most of the definitions in this section are taken from the Hawaii Penal Code 1973, section 1220. Since this section proposes definitions for a new means of defining criminal gambling, there are no comparable sections in the present law.

The definitions provided here make it possible to define the substantive offenses in the chapter more succinctly. A major policy embodied in these

definitions, and the offenses which follow, is that it will not be criminal to be a participant in social gambling. The definition of "player" is designed to facilitate this narrow exception to the gambling prohibitions. The definitions also permit offenses to be defined so as to make large scale professional gambling activity a more serious offense than is illegal gambling at a lower level.

§ 953. Aggravated unlawful gambling

1. A person is guilty of aggravated unlawful gambling if he intentionally or knowingly advances or profits from unlawful gambling activity by:

A. Engaging in bookmaking to the extent that he receives or accepts in any 24-hour period more than 5 bets totaling more than $500; or

B. Receiving in connection with a lottery or mutuel scheme or enterprise, money or written records from a person other than a player whose chances or plays are represented by such money or records; or

C. Receiving in connection with a lottery, mutuel or other gambling scheme or enterprise, more than $500 in any 24-hour period play in the scheme or enterprise.

2. Aggravated gambling is a Class B crime.

Comment*

This section is taken from the Hawaii Penal Code, section 1221. The basic gambling crimes of Title 17 are in sections 1801-1803 and 1805. In addition, chapter 81 of Title 17 prohibits various forms of lotteries.

This section defines a gambling offense that is characterized by its professional and profit-making features. The definitions of "advancing gambling activity" and "profiting from gambling activity" set forth in section 952 are key elements of the offense.

§ 954. Unlawful gambling

1. A person is guilty of unlawful gambling if he intentionally or knowingly advances or profits from gambling activity.

2. Unlawful gambling is a Class D crime.

Comment*

This section is taken from the Hawaii Penal Code, section 122. It defines an offense which is made up of intentionally or knowingly doing any of the things included in the definitions in subsections 1 and 9 of section 952.

§ 955. Possession of gambling records

1. A person is guilty of possession of gambling records if, other than as a player, he knowingly possesses any writing, paper, instrument or article, which is being used or is intended by him to be used in the operation of unlawful gambling activity as defined in this chapter.

2. Possession of gambling records is a Class D crime.

Comment*

This is a restricted version of a possession offense defined in the Hawaii Penal Code, sections 1223 and 1224.

Title 17, section 2301 punishes the possession of lottery material with the intent to sell or dispose of it. The possession of betting slips is not a violation of Title 17, section 1811 which prohibits possession of specified gambling devices. **State v. Ferris.** 284 A.2d 288 (Me. 1971).

This section is designed to be part of the effort to control illegal gambling by defining an offense against persons who knowingly participate in the gambling by keeping its records.

§ 956. Possession of gambling devices

1. **A person is guilty of possession of gambling devices if he manufactures, sells, transports, places, possesses or conducts or negotiates any transaction affecting or designed to affect ownership, custody or use of any gambling device, knowing it is to be used in the advancement of unlawful gambling activity, as defined in this chapter.**

2. Possession of gambling devices is a Class D crime.

Comment*

This section is taken from the Hawaii Penal Code, section 1225. Title 17, section 1811 punishes possession of certain gambling material, such as slot machines, but it does not prohibit possession of betting slips. **State v. Ferris,** 285 A.2d 288 (Me. 1971).

This section is similar to section 955 in that it is designed to reach activity that is necessarily supportive to illegal gambling. The requirement that the actor know that the thing he possesses will be put into illegal use serves to confine the impact of the prohibition.

§ 957. Out-of-state gambling

**In any prosecution under this chapter it is not a defense that the gambling activity, including the drawing of a lottery, which is involved in the illegal conduct takes place outside this State and is not in violation of the laws of the jurisdiction in which the lottery or other activity takes place.**

Comment*

This section is a modification of the Hawaii Penal Code, section 1228. There is no similar provision in the present law. The aim of this section is to insure that the legality of out-of-state gambling activity does not prevent the operation of the prohibitions in this chapter.

§ 958. Injunctions; recovery of payments

1. **When it appears to the Attorney General that any person has formed or published a lottery, or taken any measures for that purpose, or is engaged in selling or otherwise distributing tickets, certificates, shares or interests therein, whether such lottery originated in this State or not, he shall im-**

mediately make complaint in the name of the State to the Superior Court for an injunction to restrain such person from further proceedings therein. If satisfied that there is sufficient ground therefor, such court shall forthwith issue such injunction and thereupon it shall order notice to be served on the adverse party to appear and answer to said complaint. Such court, after a full hearing, may dissolve, modify or make perpetual such injunction, make all orders and decrees necessary to restrain and suppress such unlawful proceedings and, if the adverse party neglects to appear, or the final decree of the court is against him, judgment shall be rendered against him for all costs, fees and expenses incurred in the case and for such compensation to the Attorney General for his expenses, as the court deems reasonable.

2. Payments, compensations and securities of every description, made directly or indirectly in whole or in part, for any such lottery or ticket, certificate, share or interest therein, are received without consideration and against law and equity, and may be recovered.

Comment*

This section repeats the rules presently in Title 17, sections 2302 and 2303.

## CHAPTER 41

## CRIMINAL USE OF EXPLOSIVES AND RELATED CRIMES

§ 1001. Criminal use of explosives

1. A person is guilty of criminal use of explosives if he intentionally or knowingly:

A. Without right, throws or places explosives into, against or upon any real or personal property;

B. Makes, imports, transports, sends, stores, sells or offers to sell any explosives without a proper permit under the regulations, or in violation of the regulations;

C. Sells or supplies explosives to, or buys, procures or receives explosives for, a person prohibited by the regulations from receiving explosives; or

D. Possesses explosives with the intent to do any of the acts prohibited in this section.

2. As used in this section:

A. "Explosives" means gunpowders, powders used for blasting all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixtures or other ingredients in such proportions, quantities or packing that ignition by fire, by friction, by concussion, by percussion or by detonation of the compound or material or any part thereof may cause an explosion; and

B. "Regulations" means the rules, regulations, ordinances and bylaws issued by lawful authority pursuant to Title 25, section 2441.

3. Criminal use of explosives is a Class C crime.

Comment*

This section is a modified version of the Proposed Criminal Code of Massachusetts, chapter 269, section 13. It includes the prohibitions now in sections 501 and 502 of Title 17 and provides a penalty for violation of the regulations concerning explosives authorized by section 2441 of Title 25.

§ 1002. Criminal use of disabling chemicals

1. A person is guilty of criminal use of disabling chemicals if he intentionally sprays or otherwise uses upon any other person chemical mace or any similar substance composed of a mixture of gas and chemicals which has or is designed to have a disabling effect upon human beings.

2. Criminal use of disabling chemicals is a Class D crime.

Comment*

This section is designed to control the use of a harmful device which is capable of causing severe injuries. It is taken from section 14, chapter 269 of the Proposed Criminal Code of Massachusetts. In section 101 of chapter 5 of this Code provision is made to permit law enforcement use of this material as an alternative to more dangerous means of control such as firearms.

§ 1003. Criminal use of noxious substance

1. A person is guilty of criminal use of noxious substance if he intentionally deposits on the premises or in the vehicle or vessel of another, without his consent, any stink bomb or other device or substance which releases or is designed to release noxious offensive odors.

2. Criminal use of noxious substance is a Class E crime.

Comment*

This section is complementary to section 501 of chapter 21 of this Code which prohibits the use of stink bombs in public. In this section the conduct is defined as being directed against "another" rather than the public at large.

## CHAPTER 43

## WEAPONS

§ 1051. Possession of machine gun

1. A person is guilty of possession of a machine gun if, without authority to do so, he knowingly possesses a machine gun.

2. As used in this chapter, "machine gun" means a weapon of any description, by whatever name known, loaded or unloaded, which is capable of discharging a number of projectiles in rapid succession by one manual or mechanical action on the trigger or firing mechanism.

3. Possession of a machine gun is a Class D crime.

Comment*

The first four sections of this chapter continue the provisions of chapter 82 of Title 17 which was enacted in 1969.

§ 1052. Right to possess, carry or transport machine gun

Any law enforcement officer of the State of Maine, any law enforcement officer of another state or a territory of the United States, members of the Armed Forces, Maine National Guard and Maine State Guard may possess a machine gun if the possession or carrying of such weapon is in the discharge of his official duties and has been authorized by his appointing authority.

Machine guns manufactured, acquired, transferred or possessed in accordance with the National Firearms Act, as amended, shall be exempt from this chapter.

Comment*

See comment to section 1051.

§ 1053. Confiscation and seizure of machine gun

Any machine gun possessed in violation of section 1051 is declared to be contraband and is subject to forfeiture to the State. Any law enforcement officer shall have the power to seize the same with due process.

When a machine gun is seized as provided, the officer seizing the same shall immediately file with the judge before whom such warrant is returnable, a libel against the machine gun, setting forth the seizure and describing the machine gun and the place of seizure in a sufficient manner to reasonably identify it, that it was possessed in violation of law and pray for a decree of forfeiture thereof. Such judge shall fix a time for the hearing of such libel and shall issue his monition and notice of same to all persons interested, citing them to appear at the time and place appointed to show cause why such machine gun should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town and place where such machine gun was seized, 10 days at least before said libel is returnable. In addition, a true and attested copy of the libel and monition shall be served upon the person from whom said machine gun was seized and upon the owner thereof, if their whereabouts can be readily ascertained 10 days at least before said libel is returnable. In lieu of forfeiture proceedings, title to such seized machine gun may be transferred in writing to the State of Maine by the owner thereof. If title to and ownership in the machine gun is transferred to the State, a receipt for the machine gun shall be given to the former owner by the law enforcement officer who seized the machine gun.

Comment*

See comment to section 1051.

§ 1054. Forfeiture of machine gun

If no claimant for a machine gun seized under the authority of section 1053 appears, the judge shall, on proof of notice, declare the same to be for-

feited to the State. If any person appears and claims such machine gun, as having a right to the possession thereof at the time when the same was seized, he shall file with the judge a claim in writing stating specifically the right so claimed, the foundation thereof, the item so claimed, any exemption claimed, the time and place of the seizure and the name of the law enforcement officer who seized the machine gun, and in it declare that it was not possessed in violation of this chapter, and state his business and place of residence and sign and make oath to the same before said judge. If any person so makes claim, he shall be admitted as a party to the process, and the libel, and may hear any pertinent evidence offered by the libelant or claimant. If the judge is, upon hearing, satisfied that said machine gun was not possessed in violation of this chapter, and that claimant is entitled to the custody thereof, he shall give an order in writing, directed to the law enforcement officer having seized the same, commanding him to deliver to the claimant the machine gun to which he is so found to be entitled, within 48 hours after demand. If the judge finds the claimant not entitled to possess the machine gun, he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such judge, and issue execution thereon, and shall declare such machine gun forfeited to the State. The claimants may appear and shall recognize with sureties as on appeals in civil actions from a judge. The judge may order that the machine gun remain in the custody of the seizing law enforcement officer, pending the disposition of the appeal. All machine guns declared forfeited to the State, or title to which have been transferred to the State in lieu of forfeiture proceedings shall be turned over to the Chief of the Maine State Police. If said machine gun is found to be of a historic, artistic, scientific or educational value, the State Police may retain the machine gun for an indefinite period of time. Any other machine gun declared forfeited and in possession of the State Police shall be destroyed by a means most convenient to the Chief of the State Police.

Comment*

See comment to section 1051.

§ 1055. Trafficking in dangerous knives

1. A person is guilty of trafficking in dangerous knives, if providing he has no right to do so, he knowingly manufactures or causes to be manufactured, or knowingly possesses, displays, offers, sells, lends, gives away or purchases any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade which opens or falls or is ejected into position by the force of gravity, or by an outward, downward or centrifugal thrust or movement.

2. Trafficking in dangerous knives is a Class D crime.

Comment*

This section continues the crime now punishable in Title 17, section 3952.

# CHAPTER 45
# DRUGS

§ 1101. Definitions

As used in this Title, the following words shall, unless the context clearly requires otherwise, have the following meanings.

1. "Tetrahydrocannabinol (THC)," any substance, including hashish or marijuana, of which the concentration therein of delta-9 or delta-8 tetrahydrocannabinol exceeds 10%.

2. "Hypodermic apparatus," hypodermic syringe, hypodermic needle or any instrument designed or adapted for the administration of any drug by injection.

3. "Isomer," the optical isomer, except wherever appropriate, the optical, position or geometric isomer.

4. "Manufacture," to produce, prepare, propagate, compound, convert or process, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis.

5. "Marihuana" means all parts, including the seeds, of any plant of the genus cannabis, including but not limited to the species sativa L., whether growing or not and means also the resin extracted from any part of the plant; but does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any preparation, compound or derivative of the stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.

6. "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical syntheses:

A. Opium and any opiate, and any salt, compound, derivative or preparation of opium or opiate;

B. Any salt, compound, isomer, ester, ether, derivative or preparation thereof which is chemically equivalent or identical to or with any of the substances referred to in paragraph A, but not including the isoquinoline alkaloids of opium; or

C. Opium poppy and poppy straw.

7. "Opiate."

A. Any substance having an analgesic and addiction forming or addiction sustaining property or liability similar to morphine or capable of conversion into a drug having such analgesic and addiction forming or addiction sustaining property or liability.

B. This term does not include, unless specifically designated or listed in Schedule W, X, Y or Z, the dextrorotatory isomer or 3-methoxy-n-methyl-

morphinan and its salts, dextromethorphan, but does not include its racemic and levorotatory forms.

8. "Opium poppy," the plant of the species Papaver somniferum L., except its seeds.

9. "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing.

10. "Prescription drug," any drug upon which the manufacturer or distributor is obliged to place, in order to comply with federal law and regulations, the following legend: "Caution, federal law prohibits dispensing without prescription."

11. "Scheduled drug," any drug named or described in section 1102, schedule W, X. Y or Z.

12. "Schedule W drug," any drug named, listed or described in section 1102, schedule W.

13. "Schedule X drug," any drug named, listed or described in section 1102, schedule X.

14. "Schedule Y drug," any drug named, listed or described in section 1102, schedule Y.

15. "Schedule Z drug," any drug named, listed or described in section 1102, schedule Z.

16. "State laboratory," a laboratory of any state agency which is capable of performing any or all of the analyses that may be required to establish that a substance is a scheduled or a counterfeit drug, including, but not limited to, the laboratory of the State Department of Health and Welfare and any such laboratory that may be established within the Department of Public Safety.

17. "Traffick:"

A. To make, create, manufacture;

B. To grow or cultivate, except with respect to marihuana;

C. To sell, barter, trade, exchange or otherwise furnish for consideration; or

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

18. "Furnish:"

A. To furnish, give, dispense, administer, prescribe, deliver or otherwise transfer to another;

B. To possess with the intent to do any act mentioned in paragraph A.

**Comment***

This section contains both the definitions of the drugs whose use is controlled by this chapter and definitions of the prohibited acts which constitute the crimes. On the basis of these definitions, and the grouping of drugs into schedules accomplished by section 1102, the crimes can be defined in a straightforward way.

The aim of the code provisions regarding drugs is to collect in this chapter all of the criminal provisions concerning drugs. The revision of Title 22, included as a separate section of this Act, reflects this. The criminal provisions have been deleted and the remaining parts of the drug laws in Title 22 have been rewritten so as to grant affirmative permission for the use of drugs where called for, by pharmacists, for example. There are also provisions for civil violations where the need for control does not necessarily call for criminal penalties.

§ 1102. Schedules W, X, Y and Z

For the purposes of defining crimes under this chapter and of determining the penalties therefor, there are hereby establishd the following schedules, designated W, X, Y and Z.

1. Schedule W:

A. Unless listed or described in another schedule, any amphetamine, or its salts, isomers, or salts of isomers, including but not limited to methamphetamine, or its salts, isomers, or salts of isomers;

B. Unless listed or described in another schedule, or unless made a nonprescription drug by federal law, barbituric acid or any derivative of barbituric acid, or any salt of barbituric acid or of a derivative of barbituric acid, including but not limited to amobarbital, butabarbital, pentobarbital, secobarbital, thiopental, and methohexital;

C. Methaqualone or its salts;

D. Methprylon;

E. Flurazepam;

F. Glutethimide;

G. Unless listed or described in another schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation

(1) 3,4-methylenedioxy amphetamine

(2) 5-methoxy-3, 4-methylenedioxy amphetamine

(3) 3, 4, 5-trimethoxy amphetamine

(4) 4-methyl-2, 5, -dimethoxyamphetamine

(5) Diethyltryptamine

(6) Dimethyltryptamine

(7) Dipropyltryptamine

(8) Lysergic acid diethylamide

(9) 2,-3 methylenedioxy amphetamine.

H. Lysergic acid;

I. Lysergic acid amide;

J. Cocaine, coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical to any of these substances, except decocainized coca leaves or extractions whereof which do not contain cocaine or ecgonine.

2. ScheduleX:

A. Unless listed or described in another schedule, all narcotic drugs, including but not limited to heroin (diacetylmorphine), methadone, pethidine, morphine and opium;

B. Unless listed or described in another schedule, any of the following drugs having depressant effect on the central nervous system

(1) Chlorhexadol

(2) Sulfondiethylmethane

(3) Sulfonethylmethane

(4) Sulfonmethane

C. Phenmetrazine and its salts;

D. Nalorphine;

E. Methylphenidate;

F. Chlordiazepoxide or its salts;

G. Diazepam;

H. Carbromal;

I. Chloral hydrate;

J. Unless listed in another schedule, any of the following hallucinogenic drugs, or their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation

(1) Bufotenine

(2) Ibogaine

(3) Mescaline, including but not limited to peyote

(4) N-methyl-3-piperidyl benzilate

(5) N-ethyl-3-piperidyl benzilate

(6) Psilocybin

(7) Psilocyn

(8) Tetrahydrocannabinols

(9) Phencyclidine;

K. Unless listed in another schedule, any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof

(1) not more than 300 milligrams of dehydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium

(2) not more than 300 milligrams of dehydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage units, with one or more active nonnarcotic ingredients in recognized therapeutic amounts

(3) not more than 1.8 grams of dehydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts

(4) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts

(5) not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

3. Schedule Y:

A. Barbital;

B. Chloral betaine;

C. Ethchlorvynol;

D. Ethinamate;

E. Methohexital;

F. Methylphenobarbital;

G. Paraldehyde;

H. Petrichloral;

I. Phenobarbital;

J. Codeine (methylmorphine);

K. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredient in sufficient proportion to confer upon

the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone

(1) not more than 2.5 milligrams of diphenoxylate with not less than 25 micrograms of atropin sulfate per dosage unit;

L. Meprobamate;

M. Ergot.

4. Schedule Z:

A. All prescription drugs other than those included in schedules W, X or Y;

B. Marihuana;

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

5. Notwithstanding anything in this section, no drug or substance which is legally sold in the State of Maine without any federal or state requirement as to prescription and which is unaltered as to its form shall be included in schedule W, X, Y or Z.

Comment*

The criminal penalties in this chapter depend on the type of drug that is involved in the misconduct. By grouping the dangerous drugs into 4 classifications, in schedules W, X, Y and Z, the penalties can be scaled according to the seriousness of the abuse that is involved. The definition of schedule Z drugs, in subsection 4, permits the Board of Pharmacy to designate new drugs for inclusion in the schedule as the evidence concerning abuse of drugs comes before them.

§ 1103. Unlawful trafficking in scheduled drugs

1. A person is guilty of unlawful trafficking in a scheduled drug if he intentionally or knowingly traffics in what he knows or believes to be any scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such trafficking is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

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 drug; or

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

Comment*

This section is the basic drug abuse crime. It is built on the definition of Traffick in subsection 17 of section 1101 and the list of drugs in the

schedules provided in section 1102. This section does not penalize possession with intent to give away. That conduct comes under the definition of "furnishing," penalized in section 1106. Trafficking under this section includes the more serious possession with intent to sell. Possession without the requirement of any particular intent is criminal under section 1107; but that section does not relate to schedule Z drugs.

§ 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, but is capable, in fact, of causing death or serious bodily injury when taken or administered in the customary or intended manner.

2. Trafficking in or furnishing counterfeit drugs is a Class C crime.

Comment*

This section deals with the trafficking or furnishing of a dangerous substance with the pretence that it is a scheduled drug. In most instances this will take the form of a sale under the misrepresentation that the substance sold is a narcotic drug, but which turns out to be a form of poison.

§ 1105. Aggravated trafficking or furnishing scheduled drugs

1. A person is guilty of aggravated trafficking or furnishing scheduled drugs if he trafficks with or furnishes to a child under 16 a scheduled drug in violation of section 1103 or 1104.

2. Aggravated trafficking or furnishing is a crime one class more serious than such trafficking or furnishing would otherwise be.

Comment*

This section provides a more serious penalty for trafficking or furnishing drugs to children. It reaches all scheduled drugs.

§ 1106. Unlawfully furnishing scheduled drugs

1. A person is guilty of unlawfully furnishing scheduled drugs if he intentionally or knowingly furnishes what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such furnishing is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Violation of this section is:

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

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

Comment*

This section is designed to deal with the case where the actor furnishes what he thinks is one particular scheduled drug which turns out to be

another scheduled drug. This section is necessary in order to distinguish, for penalty purposes, the person who knows that he is passing a highly dangerous substance from the one who does so inadvertently, although still in knowing violation of the law.

§ 1107. **Unlawful possession of schedule W, X and Y drugs**

1. **A person is guilty of unlawful possession of a scheduled drug if he intentionally or knowingly possesses a useable amount of what he knows or believes to be a scheduled drug, and which is, in fact, a scheduled drug, unless the conduct which constitutes such possession is either:**

**A. Expressly authorized by Title 22; or**

**B. Expressly made a civil violation by Title 22.**

2. **Violation of this section is:**

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

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

Comment*

This section reaches possession that is not authorized by Title 22 or made a civil violation by that title. It is not necessary that the possession be accompanied by any particular intention; it is necessary, however, that the possession be of a useable amount. This sort of possession, which includes possession to use a drug one's self, does not include possession of schedule Z drugs, the group which includes marihuana. These drugs may, however, be seized under section 1114.

The case against making a criminal out of an adult who does nothing more than have for his own use a substance which is less harmful than either alcohol or tobacco has been made many times. It is especially important that a complete revision of the criminal laws, as this Code represents, seek to distinguish conduct that is truly anti-social and the proper subject for criminal penalties from that which may be looked upon as undesirable, but nonetheless not a fit object for the moral condemnation which a criminal conviction should represent or for the severely handicapping effects most often experienced by ex-convicts. Throughout the revision of the criminal laws, the Commission has been at pains to reserve its definitions of crime for conduct that is truly intolerable in present society; its judgment that possession of marihuana for one's own use does not fall within this class has gained increasing support in many places, as indicated recently by the National Council on Crime and Delinquency's Criminal Justice Newsletter (vol. 5, no. 23, Dec. 16, 1974):

**"Pressure Mounts to Decriminalize Marijuana**

"The thin cracks in the wall against decriminalization and relaxation of penalties against use of marijuana appear likely in the next few months to become large gaping holes.

"And where legislators are failing to act, law enforcement officers, choking from an ever-growing number of marijuana arrests, are taking matters in their own hands and are refusing to enforce or are downgrading enforcement of the marijuana laws on the books.

"The big breach may come on the federal level, where Sen. Jacob K. Javits (R-NY) and Rep. Edward J. Koch (D-NY) are expected to introduce federal decriminalization legislation in the next session of Congress.

"And the Justice Department, where officials have become alarmed over the increase in the number of persons arrested for possessing small amounts of the drugs, are contemplating whether to recommend stiff civil fines to take the place of criminal penalties for marijuana users.

"In 1965 the number of persons arrested on marijuana charges was 18,815. It was up to 188,682 in 1970 and reached 420,700 in 1973. About 13 million persons smoke marijuana occasionally and 2.5 million smoke it regularly. Dr. Robert L. DuPont, head of the White House Special Action Office for Drug Abuse Prevention has urged an end to criminal penalties.

"**Oregon Leads.** The model for decriminalization is Oregon which abolished criminal penalties for marijuana use in October, 1973, substituting civil fines up to $100. In Denver, a city council ordinance passed last spring treats possession of up to a half ounce as a non-criminal violation.

"The 'parking ticket model' was introduced two years ago in Ann Arbor and Ypsilanti, MI, and after being rescinded a short time in Ann Arbor has been restored.

"New York City district attorneys have circumvented stiff penalty law by permitting persons accused of simple possession of up to two pounds to plead guilty to a single misdemeanor count.

"Commisioner Cleveland B. Fuessenich of the Connecticut State Police has told his men to go easy on marijuana arrests. Many other administrators have done the same and the evidence is that police officers are agreeing more and more with this approach on the ground it will free them for more important cases and because of the difficulty of enforcing the narcotics prohibitions.

"There are exceptions. In Washington, D. C., U. S. Attorney Earl J. Silbert had to rescind his order that his office no longer prosecute such cases because of pressure from police and Attorney General William B. Saxbe.

"It is interesting to note that the State Police in Connecticut have been told to cut down on traffic citations and no longer automatically hand out summonses for every accident, even single car ones.

"Keith Stroup, director of the National Organization for the Reform of Marijuana Laws, says that Colorado, California, Hawaii, Minnesota, New Jersey, Vermont and Massachusetts will probably decriminalize marijuana next year."

§ 1108. Acquiring drugs by deception

1. A person is guilty of acquiring drugs by deception if he violates chapter 15, section 354, knowing or believing that the subject of the theft is a scheduled drug, and it is, in fact, a scheduled drug.

2. 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.

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

Comment*

The purpose of this section is to single out a form of theft when it relates to dangerous drugs. Often the deception would be in the form of inducing a physician to prescribe the forbidden drug, and subsection 2 is designed to facilitate enforcement in such cases.

§ 1109. Stealing drugs

1. A person is guilty of stealing drugs if he violates chapter 15, sections 353, 355 or 356, knowing or believing that the subject of the theft is a scheduled drug, and it is, in fact, a scheduled drug, and the theft is from a person authorized to possess or traffick in such drug.

2. Stealing drugs is a Class D crime.

Comment*

This section prohibits outright stealing, theft by deception and the theft which arises when property is delivered by mistake. This conduct is described in the provisions of the Code referred to in subsection 1.

§ 1110. Trafficking in hypodermic apparatuses

1. A person is guilty of trafficking in hypodermic apparatuses if he intentionally or knowingly trafficks in a hypodermic apparatus, unless the conduct which constitutes such trafficking is either:

A. Expressly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

2. Trafficking in hypodermic apparatuses is a Class C crime.

Comment*

This section prohibits trafficking in material that is often associated with drug abuse and the illegal commercial activity that supports it.

§ 1111. Possession of hypodermic apparatuses

1. A person is guilty of possession of hypodermic apparatuses if he intentionally or knowingly furnishes or possesses a hypodermic apparatus, unless the conduct which constitutes such possession is either:

A. Expresly authorized by Title 22; or

B. Expressly made a civil violation by Title 22.

Comment*

This section deals with giving away, or possession one's self, hypodermic apparatuses under circumstances that are not covered by Title 22.

§ 1112. Analysis of scheduled drugs

1. A state laboratory which receives a drug or substance from a law enforcement officer or agency for analysis under this chapter shall, if it is capable of so doing, analyze the same as requested, and shall issue a certificate stating the results of such analysis. Such certificate, when duly signed and sworn to by a qualified chemist, or by a laboratory technician whose testimony as an expert has been received in any court of the State of Maine, of the United States, or of any state, shall be admissible in evidence in any court of the State of Maine, and shall be prima facie evidence that the composition and quality of the drug or substance is as stated therein, unless within 10 days written notice to the prosecution, the defendant requests that a qualified witness testify as to such composition and quality.

2. Transfers of drugs and substances to and from a state laboratory for purposes of analysis under this chapter may be by certified or registered mail, and when so made shall be deemed to comply with all the requirements regarding the continuity of custody of physical evidence.

3. Nothing contained in this section shall be deemed to prevent analyses of drugs from being performed by laboratories of the United States, of another state, or of private persons or corporations.

Comment*

The purpose of this section is to set out important rules of evidence which are often involved in litigation concerning enforcement of the drug laws. Subsection 1 permits hearsay to be used to establish the identity of the drug, unless the defendant objects, in which case a witness must testify in court on the issue. Subsection 2 is designed to facilitate handling of the drug without creating difficult problems of proving that the drug seized during an arrest, or otherwise, is the same drug that is produced in court. Subsection 3 serves to insure that nothing is lost in terms of flexibility in obtaining a chemical analysis by virtue of the rules in subsections 1 and 2.

§ 1113. Arrest without warrant by police officer for drug crimes; inspection

1. A law enforcement officer shall have the authority to arrest without a warrant any person who he has probable cause to believe has committed or is committing any crime under this chapter.

2. The powers of arrest conferred upon law enforcement officers by this section are not exclusive, but are in addition to all other powers provided by law.

3. State law enforcement officers, members of the Board of Commissioners of the Profession of Pharmacy and pharmacy inspectors shall have the right to inspect the records of any pharmacy which relate to any scheduled drug or any substance designated as a "potent medical substance" under Title 22, section 2201.

Comment*

This section facilitates enforcement of the requirements of this chapter. It repeats, however, the requirement that there be probable cause before any arrest may take place. Subsection 3 is now part of Title 22, section 2215.

§ 1114. Schedule Z drugs; contraband subject to seizure

All scheduled Z drugs, the unauthorized possession of which constitutes a civil violation under Title 22, are hereby declared contraband, and may be seized and confiscated by the State.

Comment*

This section recognizes that although the possession of schedule Z drugs ought not to lead automatically to the possessor's criminal liability — in the absence of an intent to give or sell the substance — it is still sound policy to take these substances out of circulation when that can be done.

§ 1115. Notice of conviction

On the conviction of any person of the violation of any provision of this chapter, or on his being found liable for a civil violation under Title 22, a copy of the judgment or sentence and of the opinion of the court or judge, if any opinion be filed, shall be sent by the clerk of court or by the judge to the board or officer, if any, by whom the person has been licensed or registered to practice his profession or to carry on his business. The court may, in its discretion, suspend or revoke the license or registration of the person to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked and upon proper showing and for good cause, said board or officer may reinstate such license or registration.

Comment*

This section repeats the provisions of Title 22, section 2377 and includes persons who have committed any of the civil violations contained in the revised Title 22.

## PART III

## CHAPTER 47

## GENERAL SENTENCING PROVISIONS

§ 1151. Purposes

The general purposes of the provisions of this part are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;

2. To minimize correctional experiences which serve to promote further criminality;

3. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;

4. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;

5. To encourage differentiation among offenders with a view to a just individualization of sentences;

6. To promote the development of correctional programs which elicit the cooperation of convicted persons; and

7. To permit sentences which do not diminish the gravity of offenses.

Comment*

The purpose of this section is to set forth the principles on which the entire Part III is based. The enumerated principles cannot all be accomplished in any particular case and it is inevitable that balances must be struck in each instance which sacrifice one or the other of the goals set out here. It is useful, however, to provide an overall view of what the goals of sentencing are.

§ 1152. Authorized sentences

1. Every natural person and organization convicted of a crime shall be sentenced in accordance with the provisions of this Part.

2. Every natural person convicted of a crime shall be sentenced to one of the following:

A. A suspended period of imprisonment with probation as authorized by chapter 49;

B. Unconditional discharge as authorized by chapter 49:

C. To a period of imprisonment as authorized by chapter 51; or

D. To pay a fine as authorized by chapter 53. Subject to the limitations of chapter 53, section 1302, such a fine may be imposed in addition to probation or a sentence authorized by chapter 51.

3. Every organization convicted of a crime shall be sentenced to one of the following:

A. Probation or unconditional discharge as authorized by chapter 49;

B. The sanction authorized by section 1153. Such sanction may be imposed in addition to probation or a fine; or

C. A fine authorized by chapter 53. Such fine may be imposed in addition to probation or the sanctions authorized by section 1153.

4. The provisions of this chapter shall not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An appropriate order exercising such authority may be included as part of the judgment of conviction.

Comment*

This section serves to introduce the remainder of the Part. It lists the types of sentences that are authorized by law for the commission of crime.

§ 1153. Sanctions for organizations

1. If an organization is convicted of a crime, the court may, in addition to or in lieu of imposing other authorized penalties, sentence it to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media, or otherwise as the court may direct. Failure to do so may be punishable as contempt of court.

2. If a director, trustee or managerial agent of an organization is convicted of a Class A or Class B crime committed in its behalf, the court may include in the sentence an order disqualifying him from holding office in the same or other organizations for a period not exceeding 5 years, if it finds the scope or nature of his illegal actions makes it dangerous or inadvisable for such office to be entrusted to him.

3. Prior to the imposition of sentence, the court may direct the Attorney General, a district attorney, or any other attorney specially designated by the court, to institute supplementary proceedings in the case in which the organization was convicted of the crime to determine, collect and distribute damages to persons in the class which the statute was designed to protect who suffered injuries by reason of the crime, if the court finds that the multiplicity of small claims or other circumstances make restitution by individual suit impractical. Such supplementary proceedings shall be pursuant to rules adopted by the Supreme Judicial Court for this purpose. The court in which proceedings authorized by this subsection are commenced may order the State to make available to the attorney appointed to institute such proceedings all documents and investigative reports as are in its possession or control and grand jury minutes as are relevant to the proceedings.

Comment*

This section is founded primarily on deterrent considerations and the expectation that penalties which have a direct economic impact can be of major influence in the conduct of corporate affairs. The requirements of subsection 1 can serve to prevent crime in another way as well, since they can alert potential victims as to the danger of doing business with the convicted organization. Subsection 2 gives the court the flexibility to diminish the chances of any particular organization agent engaging in similar crim-

inal behavior in the future. Subsection 3 is a procedural device for accomplishing the sort of restitution which is often required in criminal cases.

§ 1154. Sentences in excess of one year deemed tentative

1. When a person has been sentenced to imprisonment for a term in excess of one year and such imprisonment has not been suspended, the sentence shall be deemed tentative, to the extent provided in this section.

2. If, as a result of the department's evaluation of such person's progress toward a noncriminal way of life, the department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character or physical or mental condition of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offender, the department may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and shall include a recommendation as to the sentence that should be imposed.

3. The court may, in its discretion, dismiss a petition filed under subsection 2 without a hearing if it deems the information set forth insufficient to warrant reconsideration of the sentence. If the court finds the petition warrants such reconsideration, it shall cause a copy of the petition to be served on the offender, the district attorney, the Attorney General and the victim of the crime or, in the case of a criminal homicide, on the victim's next of kin, all of whom shall have the right to be heard on the issue.

4. If the court grants a petition filed under subsection 2, it shall resentence the offender and may impose any sentence not exceeding the original sentence that was imposed. The period of his being in the custody of the Department of Mental Health and Corrections prior to resentence shall be applied in satisfaction of the revised sentence.

5. For all purposes other than this section, a sentence of imprisonment has the same finality when it is imposed that it would have if this section were not in force. Nothing in this section shall alter the remedies provided by law for appealing a sentence, or for vacating or correcting an illegal sentence. As used in this section, "court" means the judge who imposed the original sentence, unless he is disabled or otherwise unavailable, in which case it means any judge exercising similar jurisdiction.

Comment*

This section is drawn from the Massachusetts Criminal Code, chapter 264, section 5.

Rule 35 of the Maine Rules of Criminal Procedure, for the Superior and District Courts, provides authority in the sentencing court to revise a sentence at any time prior to commencement of its execution. There is no authority for revision by the sentencing court.

The design of this section is to supplement the provisions of Rule 35. The present rule is an important recognition that "second thoughts" or supplementary information may arise which call for a change in the sen-

tence originally imposed. But it not infrequently occurs that upon his arrival at a correctional facility, or shortly thereafter, there comes to light information about the offender or the offense which, if it had been known by the sentencing judge, would have caused him to reconsider the sentence under his Rule 35 powers. This section provides a means for conveying that information to him in appropriate cases.

The court is given authority to dismiss the petition without any notice or hearing. This is provided in view of the court already having given full consideration to the case and the need to avoid burdening the court with hearings that may be merely a repetition of the original sentencing proceedings. If the court does propose to reconsider the sentence, however, the district attorney must be notified and given the opportunity to be heard.

§ 1155. Multiple sentences

1. Other provisions of this section notwithstanding, when a person subject to an undischarged term of imprisonment is convicted of a violation of chapter 31, section 755, or of a crime against the person of a member of the staff of the institution in which he was imprisoned, or of an attempt to commit either of such crimes, the sentence shall run consecutively to the undischarged term of imprisonment.

2. When multiple sentences of imprisonment are imposed on a person at the same time, or when such a sentence is imposed on a person who is already subject to an undischarged term of imprisonment, the sentences shall run concurrently, or, subject to the provisions of this section, consecutively, as determined by the court. When multiple fines are imposed on a person or an organization, the court may, subject to the provisions of this section, sentence the person or organization to pay the cumulated amount or the highest single fine. Sentences shall run concurrently and fines shall not be cumulated unless otherwise specified by the court pursuant to subsections 3 and 4.

3. Unless the court sets forth in detail for the record the findings described in subsection 4, it shall not either:

A. Impose consecutive imprisonment terms or cumulative fines which exceed the maximum term or the highest fine authorized for the most serious crime involved; or

B. Impose consecutive imprisonment terms or cumulative fines at all.

4. The findings referred to in subsection 3 are the reasons why, having regard to the nature and circumstances of the crime, and the history and character of the defendant, the court is of the opinion that there are exceptional features to the case which require the sentence imposed.

5. A defendant may not be sentenced to consecutive terms or cumulative fines for more than one crime when:

A. One crime is an included crime of the other;

B. One crime consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other;

C. The crimes differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or

D. In separate trials, inconsistent findings of fact are required to establish the commission of the crimes.

Comment*

Title 15, section 1702 now provides the rule that unless the court decides otherwise, sentences are to be served concurrently. The purpose of this section of the Code is to provide guidelines for the exercise of that discretion. The basic rule, set out in subsection 2, is that sentences are normally to run concurrently and that if they are to run consecutively, the maximum is not normally to exceed the maximum severity for any particular crime for which the sentence is being imposed. Subsections 3 and 4 serve to permit the court to rule otherwise, both in terms of whether sentences are to run consecutively and what the maximum of the whole may be, provided it makes the findings set out in subsection 4. Subsections 1 and 5 are exceptions to this scheme; the former requires that a person who commits the crime of escape must serve his sentence for that consecutively to the one from which he escaped, while the latter limits the authority to impose consecutively terms where the crimes are essentially only one course of conduct.

§ 1156. Consideration of other crimes

1. If the convicted person consents, the court may, in its discretion, take into account in determining sentence, any other crimes committed by such person for which he has not been convicted; provided that if there is such consent, the prosecuting attorney shall be notified and afforded an opportunity to be heard. If, following any such hearing, or waiver thereof by the prosecuting attorney, the court takes into account such other crimes as are disclosed by the convicted person, the record shall so state and the sentence imposed shall bar the prosecution or conviction in this State of the person so sentenced. If the court does not take such other crimes into account, the convicted person's disclosure of them, in whole or in part, and any evidence derived directly or indirectly from such disclosure, shall not be admissible against him in any court. Before taking into account any such disclosed crimes, the court must be satisfied that the convicted person engaged in the conduct constituting such crimes.

2. Sentences imposed under this section are subject to the provisions of section 1155. Upon the imposition of sentence under this section, the clerk of the court imposing sentence shall notify in writing the clerk of the court in which there are pending any of the crimes taken into account, and the clerk of the court in which they are pending shall cause the record of such pending cases to show that they were the subject of proceedings under this section. The record of the case in which sentence is imposed shall reflect all action taken under this section.

3. Before imposing sentence, the court shall inform the convicted person of the provisions of this section.

Comment*

The purpose of this section is to permit both the court system and the convicted person to clear the record of any existing or potential charges against the person to be sentenced. Safeguards are provided in terms of hearings on the issue of taking other crimes into account and in terms of not using disclosures concerning them against the person owning up to other misdeeds.

## CHAPTER 49

## PROBATION AND UNCONDITIONAL DISCHARGE

### § 1201. Eligibility for probation and unconditional discharge

1. A person who has been convicted of any crime, except aggravated murder or murder, may be sentenced to a suspended term of imprisonment with probation or to an unconditional discharge, unless the court finds that:

A. There is undue risk that during the period of probation the convicted person would commit another crime;

B. The convicted person is in need of correctional treatment that can be provided most effectively by commitment to the Department of Mental Health and Corrections; or

C. Such a sentence would diminish the gravity of the crime for which he was convicted.

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, shall be sentenced to probation if he is in need of the supervision, guidance, assistance or direction that probation can provide. If there is no such need, and no proper purpose would be served by imposing any condition or supervision on his release, he shall be sentenced to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Comment*

Parts of this section are taken from the Proposed Massachusetts Criminal Code, chapter 264, section 20(b) and the Proposed Federal Criminal Code, section 3101(2). There is no statute of general applicability similar to this in the present law. Murder, treated separately in this section, is now subject to a mandatory life imprisonment sentence under Title 17, section 2651.

This section serves to set up a system of priorities to govern the sentencing decision. Consistent with the provisions of chapter 51, section 1251, persons convicted of aggravated murder or murder are excluded from consideration for probation or unconditional discharge. Subsection one of this section similarly excludes from this chapter those persons who would present a threat of further crime if sentenced to probation or unconditional discharge; who are in need of programs available to the Department of Mental Health and Corrections; or whose offense is too serious for sentence under this chapter.

Among those eligible, subsection 2 says that probation should be used if it appears that the convicted person would be helped thereby. Absent such a need, an unconditional discharge is warranted.

§ 1202. Period of probation; modification and discharge

1. A person convicted of a Class A or Class B crime may be placed on probation for a period not to exceed 3 years; for a Class C crime, for a period not to exceed 2 years; and for a Class D crime or Class E crime, for a period not to exceed one year.

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation, his probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed, add further requirements authorized by section 1204, or relieve the person on probation of any requirement that, in its opinion, imposes an unreasonable burden on him.

3. On application of the probation officer, or of the person on probation, or on its own motion, the court may terminate a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. Such termination and discharge shall serve to relieve the person on probation of any obligations imposed by the sentence of probation.

Comment*

This section is based on the Proposed Massachusetts Criminal Code, chapter 264, section 22, and the Proposed Federal Criminal Code, section 3102. Title 34, section 1632 of the present law places a two year limit on all orders of probation, regardless of the offenses for which the conviction was had. Section 1634 of Title 34 provides that probation may be earlier discharged.

The only significant change proposed by this section in the present Maine law relates to the periods of probation. Subsection 1, consistent with the policy of grading offenses, provides for differing maximum periods of probation, depending on the class of crime for which there was a conviction. The Massachusetts and Federal drafts propose to have six and five year maximum periods respectively for the most serious offenses. These periods have been rejected in this Code on the view that if probation is to be a successful experience at all, it will be clear that such is the case in a shorter period of time.

The flexibility for modifying the conditions of probation, and for an early release of persons from the constraints of those conditions, now in present law, are continued in this draft.

§ 1203. Split sentences

1. Subject to the limitations in subsection 2, the court may require that a person placed on probation be imprisoned in a designated institution for any portion of the probation.

2. If, pursuant to subsection 1, the court requires the person placed on probation to be imprisoned in the State Prison for the initial period of the probation, it shall fix such period of imprisonment not to exceed 90 days.

Comment*

The purpose of this section is to give the sentencing court the flexibility to order that the period of probation not begin until the convicted person has had a brief experience of imprisonment. In some cases the court may decide that such an experience is what is needed to bring home to the offender the consequences of law violation.

§ 1204. Conditions of probation

1. If the court imposes a sentence of probation, it shall attach such conditions, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life.

2. As a condition of probation, the court in its sentence may require the convicted person:

A. To support his dependents and to meet his family responsibilities;

B. To devote himself to an approved employment or occupation;

C. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition shall be considered only as a violation of probation and shall not, in itself, authorize involuntary treatment or hospitalization;

D. To pursue a prescribed secular course of study or vocational training;

E. To refrain from criminal conduct or from frequenting unlawful places or consorting with specified persons;

F. To refrain from possessing any firearms or other dangerous weapon;

G. To make restitution, in whole or in part, according to the resources of the convicted person, to the victim or victims of his crime, or to the county where the offense is prosecuted where the identity of the victim or victims cannot be ascertained. As used in this subsection, "restitution" includes the money equivalent of property taken from the victim, or property destroyed or otherwise broken or harmed, and out-of-pocket losses attributable to the crime, such as medical expenses or loss of earnings;

H. To remain within the jurisdiction of the court unless permission to leave temporarily is granted in writing by the probation officer, and to notify the court or the probation officer of any change in his address or his employment;

I. To refrain from drug abuse and excessive use of alcohol;

J. To report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere;

K. To pay a fine as authorized by chapter 53; or

L. To satisfy any other conditions reasonably related to the rehabilitation of the convicted person or the public safety or security.

3. The convicted person shall be given a written statement setting forth the particular conditions on which he is released on probation, and he shall then be given an opportunity to address the court on these conditions if he so requests at the time.

Comment*

Similar provisions are in the Massachusetts Criminal Code, chapter 264, section 21 and the Federal Criminal Code, section 3103. Both are derived from the Model Penal Code, section 301.1. Title 34, section 1632 presently provides that . . . "The court shall determine the conditions of the probation and shall give the probationer a written statement containing the conditions of his probation." There is no statute which spells out what these conditions are or might be in any individual case.

This section of the Code provides legislative guidelines for the setting of probation conditions. It does not interfere with the discretion of the sentencing court in setting conditions which it deems proper in individual cases. The provision for restitution in subsection 2, paragraph G can, in appropriate cases, be a useful means for compensating the victim of the crime.

§ 1205. Preliminary hearing or violation of conditions of probation

1. If a probation officer has probable cause to believe that a person under his supervision has violated a condition of his probation, he may issue a summons to such person to appear before the district supervisor or such other official as may be designated by the Director of Probation and Parole for a preliminary hearing to determine whether such probable cause in fact exists. If the alleged violation constitutes the commission of a new crime, the probation officer may communicate the basis for his belief that there is probable cause that the person under supervision has committed a crime to any law enforcement officer who may, in his discretion, thereupon arrest such person. The probation officer shall forthwith provide the arrested person with a written notice of a preliminary hearing before the district supervisor to determine whether there is probable cause to believe that he has committed the new crime.

2. The preliminary hearing shall be held within 48 hours if a person under supervision has been arrested, and as soon as practicable if he has not. It shall be held as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. The summons and written notice provided for in subsection 1 shall name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person of his rights under this section. In no case shall there be a waiver of the right to a preliminary hearing.

3. At the preliminary hearing the person alleged to have violated a condition of his probation has the right to confront and cross-examine persons

who have information to give against him, to present evidence on his own behalf, and to remain silent. If the district supervisor determines on the basis of the evidence before him that there is not probable cause to believe that a condition of probation has been violated, he shall terminate the proceedings and order the person on probation forthwith released from any detention he may then be in. In such case, no further proceedings to revoke the probation, based on the conduct alleged to have been the violation may be brought. If he determines that there is such probable cause, he shall prepare a written statement summarizing the evidence that was brought before him, and particularly describing that which supports the belief that there is probable cause. The person on probation shall be provided a copy of this statement. At the outset of the preliminary hearing, the district supervisor shall inform the person of his rights under this section and of the provisions of section 1206. Such person may waive, at the preliminary hearing, his right to confront and cross-examine witnesses against him, his right to present evidence in his own behalf, and his right to remain silent. No other rights may then be waived.

Comment*

This section sets out the procedures to be followed in the preliminary hearing on probation revocation which is required by **Gagnon v. Scarpelli,** 411 U. S. 778 (1973). It provides for a finding of probable cause by someone other than the probationer's probation officer, notice of the allegations of probation violation, and a hearing before a neutral official.

§ 1206. Court hearing on probation revocation

1. If, as a result of proceedings held under section 1205, there is a determination of probable cause, the Director of Probation and Parole may apply to any court for a summons ordering the person to appear before the court for a hearing on the alleged violation. The application for summons shall include a copy of the written statement prepared pursuant to section 1205, subsection 3. The person on probation shall be furnished a copy of the application by the Director of Probation and Parole.

2. Upon the receipt of the application provided for in subsection 1, the court may, in its discretion:

A. Issue the summons and order a hearing on the allegations or deny the application and order the person on probation released forthwith if he has been arrested on the allegations;

B. If it is not the court which imposed the probation sentence, transfer the proceedings to such court which shall then proceed pursuant to this section; or

C. If a hearing is ordered, the person on probation shall be notified, and the court, including the court to which the proceedings may have been transferred, may issue a warrant for his arrest and order him committed, with or without bail, pending the hearing.

3. If a hearing is held, the person on probation shall be afforded the opportunity to confront and cross-examine witnesses against him, to present

evidence on his own behalf, and to be represented by counsel. If he cannot afford counsel, the court shall appoint counsel for him.

4. When the alleged violation constitutes a crime:

A. If the court hearing the violation is a District Court, it may

(1) accept a plea of guilty or nolo contendere to such crime, provided all the requirements for accepting such pleas are complied with;

(2) if it has jurisdiction to try such crime, revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime, or it may order him tried for such crime; or

(3) order the allegation of such new crime to be brought before the Superior Court, if it does not have jurisdiction to try such crime.

B. If the court hearing the violation is a Superior Court, it may

(1) accept a plea of guilty or nolo contendere to crime, provided all the requirements for accepting such pleas are complied with;

(2) revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime; or

(3) order the person tried for such crime.

5. If the alleged violation does not constitute a crime and the court finds that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. In such case, the court shall impose the sentence of imprisonment that was suspended when probation was granted.

6. If the person on probation is convicted of a new crime during the period of probation, the court may sentence him for such crime, revoke probation and impose the sentence of imprisonment that was suspended when probation was granted, subject to chapter 47, section 1155.

Comment*

This section sets out the procedures to be followed in a court hearing on probation violation following the preliminary hearing required under section 1205. Rights to notice, opportunity to be heard, and counsel are provided. The options available to the court, if it finds the violation to have been committed, depend on whether the violation is a new crime. Subsection 4 permits the court to order trial for the new crime or to revoke probation. If the person is convicted of the new crime, the probation may then be revoked, although the sentencing will be governed by the provisions of section 1155 of chapter 47 concerning multiple convictions.

## CHAPTER 51

## SENTENCES OF IMPRISONMENT

§ 1251. Imprisonment for criminal homicide in the first or 2nd degree

1. A person who has been convicted of a crime may be sentenced to imprisonment pursuant to this chapter.

2. In the case of a person convicted of criminal homicide in the 2nd degree, the court shall commit him to the custody of the department for purposes of an evaluation of such person as is relevant to sentence. No later than 120 days from such commitment, the department shall return the convicted person to the court, along with the report of its evaluation and a recommended sentence.

3. Upon receipt of the report and recommendations provided for in subsection 2, the court shall sentence him to the State Prison for any term of years that is not less than 20.

4. A person convicted of criminal homicide in the first degree shall be sentenced to life imprisonment.

Comment*

This section reflects a number of basic policy decisions. In subsection 1 is the decision that the Code defines offenses which are serious enough to merit the possibility of some imprisonment. That is, there is no conduct defined in the Code and, by virtue of the provisions of section 4 of chapter 1 no conduct defined outside of the Code which is criminal but which does not have an imprisonment penalty. Crime and the possibility of prison are linked.

In subsections 2 and 3 provision is made for sentencing a person convicted of criminal homicide in the second degree. Such a person must be sentenced to the State Prison for not less than 20 years. By virtue of the "good time" deductions authorized by section 1253 of this chapter, a twenty-year sentence means a period of imprisonment of about thirteen and a half years or twelve years, depending on what the behavior of the inmate is and whether he can earn special deductions for assuming unusual responsibilities.

In subsection 3 the court is required to sentence a person convicted of criminal homicide in the first degree to life imprisonment. Such a person may also "earn" the deductions of section 1253, but they may not be applied to reduce his sentence until after he has served 15 years, and then the reduction can take place only with the permission of the court. See subsection 2 of section 1253.

§ 1252. Imprisonment for crimes other than criminal homicide in the first or 2nd degree

1. In the case of a person convicted of a crime other than criminal homicide in the first or 2nd degree, the court may sentence to imprisonment for a definite term as provided for in this section. The sentence of the court shall specify the place of imprisonment, provided that no person shall be sentenced to imprisonment in the Men's Correctional Center located at South Windham, Maine, if his sentence exceeds 5 years or he is, at the time of sentence, more than 26 years old.

2. The court shall set the term of imprisonment as follows:

A. In the case of a Class A crime, the court shall set a definite period not to exceed 20 years;

B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years;

C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;

D. In the case of a Class D crime, the court shall set a definite period not to exceed one year; or

E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.

3. The court may add to the sentence of imprisonment a restitution order as is provided for in chapter 49, section 1204, subsection 2, paragraph G. In such cases, it shall be the responsibility of the department to determine whether the order has been complied with and consideration shall be given in the department's administrative decisions concerning the imprisoned person as to whether the order has been complied with.

4. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use should be given serious consideration by the court in exercising its sentencing discretion.

Comment*

The sentencing structure for all crimes other than the two most serious criminal homicides is different from present law in many respects. There are no more indeterminate sentences whereby the release of a prisoner depends on the discretion of corrections officials. This section sets a maximum period of imprisonment for each class of crime and requires that the court pick a precise period within that maximum. This period is then the time spent incarcerated, less the deductions authorized in section 1253. There is the possibility of an exception to this process based on the provisions of section 1154 of chapter 47 which permits the Corrections Bureau to request the court to reduce the sentence in any case where it exceeds one year.

Subsection 4 permits the court to impose a sentence one class higher than that authorized for the crime of which the person was convicted in any case in which it is proved that the crime was committed with the use of a dangerous weapon.

§ 1253. Calculation of period of imprisonment

1. The sentence of any person committed to 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.

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 department shall have the same authority regarding such local lock-ups as is provided regarding county jails by Title 34, section 3. 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.

3. Each person sentenced to imprisonment for more than 6 months whose record of conduct shows that he has observed all the rules and requirements of the institution in which he has been imprisoned shall be entitled to a deduction of 10 days a month from his sentence, commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the department.

4. 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.

Comment*

This section provides for the good time deductions in all cases where the sentence exceeds six months. In addition, subsection 4 authorizes an additional two days a month for special assignments made at the discretion of the corrections authorities.

§ 1254. Release from imprisonment

1. An imprisoned person shall be unconditionally released and discharged upon the expiration of his sentence, minus the deductions authorized under section 1253.

2. A person sentenced to life imprisonment may, after having served 15 years, and annually thereafter, and a person sentenced to a term of years in excess of 20 years, may, after having served 12 years, and annually thereafter, petition the Superior Court of the county in which he is imprisoned for a reduction of his sentence to a term of years. Upon notice to the Attorney General and the victim or the next of kin of the victim, the court shall hold a hearing on the petition and may, in its discretion, reduce the sentence from life imprisonment to a term of years that is not less than 30, and reduce any other sentence to a term that is not less than 20. If the sentence is so reduced the imprisoned person shall be unconditionally released and discharged upon the expiration of the term specified in such sentence, minus such deductions authorized under section 1253 as he shall have accumulated.

3. All persons in the custody of the Bureau of Corrections serving a criminal sentence on the effective date of this code shall be released and discharged according to the law as it was in force on the date they were sentenced and such law shall continue in force for this purpose as if this code were not enacted; provided, however, that any such person may elect to

be released and discharged according to section 1253 and of this section. Upon such election he shall be released and discharged as if section 1253 and this section were in force on the date he was sentenced.

Comment*

Subsection 1 contains the general rule that requires release upon the expiration of the sentence and not at the discretion of the Parole Board. An exception is made to this rule in subsection 3 in order to avoid having this rule create an **ex post facto** effect. In subsection 2 are procedures whereby persons sentenced for criminal homicide in the first or second degrees and those sentenced for consecutive terms which exceed 20 years, may petition the court to reduce their sentences. If they are successful, the deductions they will have earned will be applied to determine their release and discharge, a bit of mathematics it is assumed the court will do in determining whether and how much to reduce any given sentence.

## CHAPTER 53

## FINES

§ 1301. Amounts authorized

1. A natural person who has been convicted of a Class C, Class D or Class E crime may be sentenced to pay a fine, subject to section 1302, which shall not exceed:

A. $1,000 for a Class C crime;

B. $500 for a Class D crime;

C. $250 for a Class E crime; and

D. Regardless of the classification of the crime, any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

2. As used in this section, "pecuniary gain" means the amount of money or the value of property at the time of the commission of the crime derived by the defendant from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed. When the court imposes a fine based on the amount of gain, the court shall make a finding as to the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding, the court may conduct, in connection with its imposition of sentence, a hearing on this issue.

3. If the defendant convicted of a crime is an organization, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

A. $50,000 for a class A crime;

B. $20,000 for a Class B crime;

**C. $10,000 for a Class C crime;**

**D. $5,000 for a Class D crime or a Class E crime; and**

**E. Any higher amount which does not exceed twice the pecuniary gain derived from the crime by the convicted organization.**

Comment*

Article I, section 9 of the Maine Constitution prohibits the imposition of "excessive fines." There is little clear guidance to what this means, however, since the only reported case interpreting this prohibition declared: "In determining the question whether . . . or not a fine imposed is excessive, regard must be had to the purpose of the enactment, and to the importance and magnitude of the public interest sought by it to be protected." **State v. Lubee**, 93 Me. 418, 421 (1899). There is no general statutory provision governing the amount of fines authorized by law. Each criminal offense defined in the statutes carries its own fine penalty. Chapter 303 of Title 15 deals with the subject of fines, but is restricted mostly to the recovery of fines and their payment to the appropriate government official.

This section follows the general policy of having the criminal code grade offenses by imposing differing penalties on offenses of differing seriousness. The limits provided are maxima, so that a sentence may include a fine anywhere below the specified limit. Criteria for imposing fines are in section 1302.

§ 1302. **Criteria for imposing fines**

**No convicted person shall be sentenced to pay a fine unless the court determines that he is or will be able to pay the fine. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the offender and the nature of the burden that its payment will impose. No person shall be imprisoned solely for the reason that he will not be able to pay a fine.**

Comment*

There are no criteria in the present law for imposing fines, although it is likely that the consideration that goes into deciding on a sentence to pay a fine utilizes some of the criteria set forth here.

The provisions governing fines must be viewed in the context of the code policy of having every crime punishable by imprisonment. There are no crimes punishable only by a fine. It is, of course, possible that the circumstances of any particular case will lead the court to withhold the commitment alternative and to invoke only the fine that is authorized.

The purpose of the last sentence is to minimize the number of times that there are defaults in the payment of fines. The provision requires that if a person is found to be unable to pay a fine that might be required, he shall not, for that reason alone, be committed. Where an unconditional discharge is not in order, the court can place the offender on probation.

§ 1303. Time and method of payment of fines

1. If a convicted person is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith to the clerk.

2. If a convicted person sentenced to pay a fine is also placed on probation, the court may make the payment of the fine a condition of probation. In such cases, the court may order that the fine be paid to the probation officer.

Comment*

This section provides explicit authority for tailoring the method of paying a fine to the circumstances of the convicted person. Although the fine would ordinarily be paid immediately to the clerk, it is possible for it to be paid in installments over a period of time specified in the sentence, or that it be paid as part of the conditions of probation.

§ 1304. Default in payment of fines

1. When a convicted person sentenced to pay a fine defaults in the payment thereof or of any installment, the court, upon the motion of the official to whom the money is payable, as provided in section 1303, or upon its own motion, may require him to show cause why he should not be sentenced to be imprisoned for nonpayment and may issue a summons or a warrant of arrest for his appearance. Unless such person shows that his default was not attributable to a wilful refusal to obey the order of the court or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was unexcused and may order him imprisoned until the fine or a specified part thereof is paid. The term of imprisonment for such unexcused nonpayment of the fine shall be specified in the court's order and shall not exceed one day for each $5 of the fine or 6 months, whichever is the shorter. When a fine is imposed on an organization, it is the duty of the person or persons authorized to make disbursements from the assets of the organization to pay it from such assets and failure so to do may be punishable under this section. A person imprisoned for nonpayment of a fine shall be given credit towards its payment for each day that he is in the custody of the department, at the rate specified in the court's order. He shall also be given credit for each day that he has been detained as a result of an arrest warrant issued pursuant to this section.

2. If it appears that the default in the payment of a fine is excusable, the court may make an order allowing the offender additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or the unpaid portion thereof in whole or in part.

3. Upon any default in the payment of a fine or any installment thereof, execution may be levied, and such other measures may be taken for the collection of the fine or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against a person. The levy of

**execution for the collection of a fine shall not discharge a person imprisoned for nonpayment of the fine until such time as the amount of the fine has been collected.**

**Comment***

Title 15, § 1904 now provides:

> Except when otherwise provided, any convict sentenced to pay a fine or costs or both and committed or confined for default thereof and for no other cause shall be given a credit of $5 on such fine or costs or both for each day during which he shall be confined and shall be discharged at such time as the said credits or such credits as have been given and money paid in addition thereto shall equal the amount of fine or costs or both, but no convict shall serve more than 11 months to discharge his liability under any single fine or costs or both, and in all cases no further action shall be taken to enforce payment of said fine or costs or both.

The validity of this part of the Maine laws is seriously in doubt by virtue of the decisions of the Supreme Court of the United States in **Tate v. Short,** 401 U.S. 395 (1971) and **Williams v. Illinois,** 399 U.S. 235 (1970). In these cases the Court ruled that an indigent person could not be imprisoned solely because he could not raise the funds necessary to pay a fine, and that the period of incarceration for nonpayment could not exceed that which was otherwise authorized by the Legislature for commission of the offense.

This section of the Code authorizes a commitment under two sets of circumstances. One is where the failure to pay the fine is found to be without excuse. The second is where, although the court finds that the default is excusable, the convicted person would escape punishment altogether unless he were ordered to the custody of the Department. This latter situation may arise where the person may not be able to raise or earn the money needed to meet his obligations under the original fine sentence. This is, to be sure, an instance of committing a poor person where a wealthy one would remain free; but it does not violate the rule in the **Tate** case since there, the statute violated provided for only a fine, so that imprisonment was altogether impossible for a nonindigent defendant. In this regard, Justice Brennan wrote for the Court:

> Since Texas has legislated a 'fines only' policy for traffic sentences, that statutory ceiling cannot, consistently with the Equal Protection Clause, limit the punishment to payment of the fine if one is able to pay it, yet convert the fine into a prison term for an indigent defendant without the means to pay his fine. Imprisonment in such a case is not imposed to further any penal objective of the State . . . We emphasize that our holding today does not suggest any constitutional infirmity in imprisonment of a defendant with the means to pay a fine who refuses or neglects to do so. Nor is our decision to be understood as precluding imprisonment as an enforcement method when alternative means satisfy the fines by those means; the determination of the constitutionality of imprisonment in that circumstance must await the presentation of a concrete case.

The last situation referred to by Justice Brennan is provided for in this section; it has not, as yet, been ruled on by the Court.

§ 1305. Revocation of fines

1. A convicted person who has been sentenced to pay a fine and has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion thereof. If the court finds that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion thereof in whole or in part, or modify the time and method of payment.

2. If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, such judgment may include an order that any or all of a fine which the convicted person paid pursuant to the sentence for such conviction be returned to him.

Comment*

The purpose of this section is to provide a flexibility to adjust fines as changing circumstances might require. In addition, subsection 2 permits an "undoing" of the fine in any case in which the conviction itself is upset.

Sec. 2. 15 MRSA §§ 2, 102, 341, 342, 451, 452, 751, 1701-A, 1741 to 1743 and 1842 are repealed.

Sec. 3. 15 MRSA, § 1702, 2nd ¶, as amended by PL 1965, c. 356, § 55, is repealed.

Sec. 4. 15 MRSA, § 1904, as amended by PL 1965, c. 425, § 10, is repealed.

Sec. 5. 17 MRSA, cc. 1, 3, 5, 8, 9, 11, 15, 19, 21, 23, 25, 27, 31, 33, 35, 37, 39 and 41 are repealed.

Sec. 6. 17 MRSA, §§ 1053-1055, 1058, 1091, 1092, 1094, 1131, 1133 and 1134 are repealed.

Sec. 7. 17 MRSA, cc. 45, 51, 53, 55 and 57 are repealed.

Sec. 8. 17 MRSA, §§ 1601, 1602, 1603-A, 1604-1608, 1609, 1612-1617 and 1619-1634 are repealed.

Sec. 9. 17 MRSA, cc. 61, 63 and 65 are repealed.

Sec. 10. 17 MRSA, § 1951 is repealed.

Sec. 11. 17 MRSA, cc. 71, 73 ,75 and 77 are repealed.

Sec. 12. 17 MRSA, § 2301 is repealed.

Sec. 13. 17 MRSA, c. 82 is repealed.

Sec. 14. 17 MRSA, §§ 2351-2355, 2403, 2441, 2442, 2491-2493-A, 2494-2496, 2498, 2501-2505, 2507 and 2508 are repealed.

**Sec. 15.** **17 MRSA, cc. 85, 87, 89, 95, 97 and 99** are repealed.

**Sec. 16.** **17 MRSA, §§ 3101-3103** are repealed.

**Sec. 17.** **17 MRSA, c. 103** is repealed .

**Sec. 18.** **17 MRSA, §§ 3281, 3282 and 3301** are repealed.

**Sec. 19.** **17 MRSA, cc. 107, 109, 111, 112, 113, 115 and 119** are repealed.

**Sec. 20.** **17 MRSA, §§ 3701-3703** are repealed.

**Sec. 21.** **17 MRSA, cc. 123 and 125** are repealed.

**Sec. 22.** **17 MRSA, §§ 3851-3853 and 3854-3858** are repealed.

**Sec. 23.** **17 MRSA, c. 129** is repealed.

**Sec. 24.** **17 MRSA, §§ 3951-3955, 3957-3961, 3963 and 3965** are repealed.

**Sec. 25.** **17 MRSA, c. 132** is repealed.

**Sec. 26.** **17 MRSA, § 3104, 2nd sentence,** as last amended by PL 1973, c. 785, § 1, is repealed.

**Sec. 27.** **22 MRSA, § 2201** is amended to read:

**§ 2201. Regulations**

The Board of Commissioners of the Profession of Pharmacy, hereinafter in this subchapter called the "board," may from time to time, after notice and hearing, by regulations, designate as potent medicinal substances any compounds of barbituric acid, amphetamines or any other central nervous system stimulants or depressants, psychic energizers or any other drugs having a tendency to depress or stimulate which are likely to be injurious to health if improperly used ~~and it shall be unlawful for any person, firm or corporation to sell, furnish or give away or to offer to sell, furnish or give away any such potent medicinal substances so designed, except as prescribed in section 2210~~.

**Comment***

The portion to be repealed reads: "and it shall be unlawful for any person, firm or corporation to sell, furnish or give away or to offer to sell, furnish or give away any such potent medicinal substance so designated, except as prescribed in section 2210." The declaration of illegality is unnecessary since all criminal conduct is defined in chapter 45 of the code and it would not be appropriate to make the described conduct into a civil violation. Section 2210 is also revised to grant permission for dealing in these substances in affirmative terms.

**Sec. 28.** **22 MRSA, § 2205** is repealed.

**Comment***

The prohibition against manufacture of cocaine and the other substances described in this section is now in section 1103 of chapter 45 of the Criminal Code.

Sec. 29. 22 MRSA, §§ 2207, 2210, as amended, 2210-A, as enacted by PL 1971, c. 621, § 2, are repealed.

Comment*

These sections are incorporated into a new section 2207-A.

Sec. 30. 22 MRSA, § 2207-A is enacted to read:

§ 2207-A. Permissive use of drugs

1. Physicians, dentists, veterinarians, drug jobbers, drug wholesalers, drug manufacturers and pharmacists and pharmacies registered under Title 32, section 2901, are authorized to deal professionally with dangerous substances.

2. As used in this section, "to deal professionally" means:

A. In the case of a physician, dentist, in good faith and to his own patients as part of professional treatment, to prescribe, administer or deliver, or to possess for such purpose;

B. In the case of a veterinarian, in good faith and for an animal under his professional treatment, to prescribe, administer or deliver, or to possess for such purpose;

C. In the case of a drug jobber, drug wholesaler or drug manufacturer, in good faith to possess, sell, furnish, give away or offer to sell, furnish or give away to pharmacists, pharmacies, physicians, dentists, veterinarians, hospitals and to each other;

D. In the case of pharmacies and pharmacists registered under Title 32, section 2901,

(1) To sell at retail upon the written order or prescription of a physician, dentist or veterinarian and in good faith to each other and to possess for such purpose; and

(2) To sell at retail in good faith and for the purpose which it is intended, any compound, mixture or preparation containing a dangerous substance which,

(a) Also contains a sufficient quantity of another drug or drugs to cause it to produce an action other than its hypnotic, somnifacent, stimulating or depressant action; or

(b) Is intended for use as a spray or gargle or for external application and contains some other drug or drugs rendering it unfit for internal administration.

3. As used in this section, "dangerous substance" means:

A. Opium, morphine, heroin, codeine or any salt or compound of the same, or any preparation containing any of the said substances or their salts or compounds, or alpha or beta eucaine or their salts or compounds or any synthetic substitute for them, or any preparation containing alpha or beta eucaine or their salts or compounds;

**B. Any drug bearing on its container the legend "Caution — federal law prohibits dispensing without prescription," or any veronal or barbital, or any other salts, derivatives or compounds of barbituric acid, or any registered, trademarked or copyrighted preparation registered in the United States Patent Office containing the substances in this paragraph, or any drug designated by the board as a "potent medicinal substance;" and**

**C. Any amphetamines or derivatives or compounds thereof.**

**Comment***

This section sets forth the permissive use of the substances named which is now contained in Title 22, section 2207, the subsection 3, paragraph A, drugs, section 2210, the subsection 3, paragraph B, drugs, except for the amphetamines, and section 2210-A, the amphetamines.

Sec. 31. **22 MRSA, § 2212**, as last amended by PL 1971, c. 282, § 12, is repealed and the following enacted in place thereof:

**§ 2212. Using drugs not in prescription**

**If a pharmacist shall knowingly use any drugs or ingredients in preparing or compounding a written or oral prescription of any physician different from those named in the prescription, such use shall constitute a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.**

**Comment***

No substantive change is made in this revision. It now is set forth as a civil violation which automatically takes the conduct out of the criminal penalties in chapter 45 of the Criminal Code.

Sec. 32. **22 MRSA, § 2212-A**, as last amended by PL 1971, c. 282, § 2, is repealed and the following enacted in place thereof:

**§ 2212-A. Refill prescriptions**

**If a pharmacist or person employed by a pharmacist refills from a copy of the original, any prescription for depressant, stimulant or oral contraceptive drugs, such refilling shall constitute a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.**

**Comment***

No substantive change is made in this revision. It now is set forth as a civil violation which automatically takes it out of the criminal penalties in chapter 45 of the Criminal Code.

Sec. 33. **22 MRSA, § 2212-B**, as last repealed and replaced by PL 1971, c. 487, § 2, is repealed.

Sec. 34. **22 MRSA, § 2212-C**, as last amended by PL 1971, c. 621, § 3, is repealed.

Sec. 35. **22 MRSA, § 2212-E**, as enacted by PL 1971, c. 621, § 4, is repealed.

**Comment***

The 3 previous repealed sections provide criminal penalties for dealing in named hallucinogenic drugs. This is now covered by chapter 45 of the Criminal Code. The named sections also grant permission to the laboratory of the Department of Health and Welfare to do what is otherwise forbidden. This permission is not necessary since the Criminal Code, chapter 5, section 102 makes justifiable any conduct performed as a public duty.

**Sec. 36. 22 MRSA, §§ 2214 and 2215,** as amended, are repealed.

**Comment***

These sections contain the criminal penalties for violation of Title 22, chapter 551, subchapter II. Since the criminal penalties are all in chapter 45 of the Criminal Code, these sections are no longer necessary. Section 2215 also contains a provision imposing up to 2 years imprisonment for being in public under the influence of one of the drugs mentioned in the subchapter. It is recommended that this be repealed and not reenacted.

**Sec. 37. 22 MRSA, § 2362,** as last amended by PL 1971, c. 621, § 6, is repealed.

**Comment***

This is the general penalty for having narcotic drugs. It is not necessary in view of the prohibition on possession of narcotics in chapter 45, section 1107 of the Criminal Code.

**Sec. 38. 22 MRSA, § 2362-A,** as last amended by PL 1971, c. 544, § 77-A, is repealed.

**Sec. 39. 22 MRSA, § 2362-B,** as enacted by PL 1971, c. 296, is repealed.

**Sec. 40. 22 MRSA, § 2362-C,** as enacted by PL 1971, c. 621, § 7, is repealed.

**Sec. 41. 22 MRSA, § 2362-D** is enacted to read:

**§ 2362-D. Hypodermic syringes; prescriptions**

**1. Hypodermic apparatus may be possessed by a physician, dentist, podiatrist, funeral director, nurse, veterinarian, a manufacturer or dealer in embalming supplies, wholesale druggist, manufacturing pharmacist, pharmacist, manufacturer of surgical instruments, an employee of an incorporated hospital acting under official direction, a carrier or messenger engaged in the transportation of hypodermic apparatus as an agent of any of the above, employees of scientific research laboratories, employees of educational institutions, employees of an agency or organization duly authorized by the Maine Board of Commissioners of the Profession of Pharmacy or a person who has received a written prescription issued under subsection 2.**

**2. A physician, dentist, podiatrist or osteopathic physician may issue to a patient under his immediate charge a written prescription to purchase a hypodermic apparatus. The Maine Board of Commissioners of the Profession**

of Pharmacy shall, by regulation, prescribe the form of prescription that the physician shall use and the records and information that shall be kept by the physician and by the pharmacist filling such prescription.

3. As used in this section, "hypodermic apparatus" has the meaning set forth in Title 17-A, chapter 45, section 1101, except that it does not include a syringe, needle or instrument for use on farm animals and poultry.

Comment*

The repealed sections 2362-A and 2362-B deletes the criminal penalties since these are covered by sections 1110 and 1111 of the Criminal Code and the new section 2362-D combines the permission now contained in the repealed sections. Section 2362-C provides criminal penalties for violations of the chapter on narcotic drugs. It is no longer necessary in view of the penalties provided in chapter 45 of the Criminal Code.

Sec. 42. 22 MRSA, § 2364, the first ¶ is repealed and the following enacted in place thereof:

Subject to the limitations in subsection 3, the following is expressly authorized:

Sec. 43. 22 MRSA, § 2364, sub-§§ 2 and 3 are repealed and the following enacted in place thereof:

2. Liniments, etc. Prescribing, administering, dispensing or selling at retail of liniments, ointments and other preparations that are susceptible of external use only and that contain narcotic drugs in such combinations as prevent their being readily extracted from such liniments, ointments or preparations, except that this authorization shall not apply to any liniments, ointments and other preparations that contain coca leaves in any quantity or combinations.

3. The authorization contained in this section shall apply to the following:

A. Prescribing, administering, dispensing or selling to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when the actor knows or can by reasonable diligence ascertain that such prescribing, administering, dispensing or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed or sold, within any 48 consecutive hours, with more than 4 grains of opium, or more than ⅓ grain of morphine, or of any of its salts, or more than 4 grains of codeine or any of its salts, or will provide such person or the owner of such animal, within 48 consecutive hours, with more than one preparation authorized by this section: and

B. A medicinal preparation or liniment, ointment or other preparation susceptible of external use only, prescribed, administered, dispensed or sold which does not contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than that possessed by the narcotic drug alone; and any preparation which is prescribed, administered, dispensed or sold not in good faith as a medicine and for the purpose of evading the law.

4. The board may by regulation provide for further authorization to such extent as it determines to be consistent with the public welfare, pharmaceutical preparations found by the board after due notice and opportunity for hearing:

A. Either to possess no addiction-forming or addiction-sustaining liability sufficient to warrant imposition of all of the requirements of law; and

B. Does not permit recovery of a narcotic drug having such an addiction-forming or addiction-sustaining liability, with such relative technical simplicity and degree of yield as to create a risk of improper use.

In exercising the authority granted in paragraph A, the board by regulation and without special findings may grant authorizations relating to such pharmaceutical preparations as determined to be exempt under the federal narcotic law and regulations. If the board shall subsequently determine that any such pharmaceutical preparation does possess a degree of addiction liability that, in its opinion, results in abusive use, it shall by regulation publish the determination in the state papers. The determination shall be final and the authorization shall cease to apply to the particular pharmaceutical preparation.

Sec. 44. 22 MRSA, § 2366 is repealed and the following enacted in place thereof:

§ 2366. Persons and corporations exempted

The following are authorized to possess and have control of narcotic drugs: Common carriers or warehousemen while engaged in lawfully transporting or storing such drugs, any employee of the same acting within the scope of his employment, temporary incidental possession by employees or agents of persons lawfully entitled to possession and persons whose possession is for the purpose of aiding public officers in performing their official duties.

Comment*

The permission has been restated in conforming terminology.

Sec. 45. 22 MRSA, § 2368 is repealed and the following enacted in place thereof:

§ 2368. Licenses for manufacturers and wholesalers

Any person having a license from the Bureau of Health is authorized to manufacture or supply narcotic drugs within the scope of his license.

Comment*

The revision puts the permission to licensees in affirmative language.

Sec. 46. 22 MRSA, § 2370, sub-§ 5 is repealed and the following enacted in place thereof:

5. Use. A person in charge of a hospital or of a laboratory, or in the employ of this State or of any other state, or of any political subdivision thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly

**licensed in some state, territory or the District of Columbia to practice his profession, or a retired commissioned medical officer of the United States Army, Navy or Public Health Service employed upon such ship or aircraft, who obtains narcotic drugs under this section or otherwise, is authorized to administer, dispense or otherwise use such drugs within the State, only within the scope of his employment or official duty, and then only for scientific or medicinal purposes.**

Comment*

The revision following the indicated omissions puts permission in affirmative language.

Sec. 47. 22 **MRSA**, § 2375, as last amended by PL 1971, c. 282, § 12, is repealed.

Comment*

This is covered by chapter 45, section 1108 of the Criminal Code.

Sec. 48. 22 **MRSA**, § 2380 is repealed and the following enacted in place thereof:

§ 2380. **Violation of provisions**

**Any conduct in violation of this chapter is a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.**

Comment*

The revision takes out all the criminal penalties since these are now in chapter 45 of the Criminal Code. What remains are technical violations, not keeping the proper form of record, for example, for which a civil violation is appropriate.

Sec. 49. 22 **MRSA**, § 2381, as enacted by PL 1969, c. 443, § 7, is repealed.

Comment*

Since so much of the chapter concerning cannabis should be repealed, the special title should be repealed as well.

Sec. 50. 22 **MRSA**, § 2382, as last amended by PL 1971, c. 544, § 77-C, is repealed.

Comment*

All of these terms are defined in chapter 45, section 1101 of the Criminal Code and there is no special need for their being defined here again.

Sec. 51. 22 **MRSA**, § 2383, as last amended by PL 1973, c. 546, is repealed and the following enacted in place thereof:

§ 2383. **Possession**

**Possession of a usable amount of marijuana is a civil violation for which a forfeiture of not more than $100 may be adjudged.**

**Comment***

The revision permits confiscation of the drug under chapter 45, section 1114 of the Criminal Code.

The provisions of subsections 1 and 3 are in chapter 45 of the Criminal Code. The "being present" prohibition in subsection 2 is not adopted as a matter of policy against criminalizing persons who contribute nothing to antisocial conduct except their physical presence.

**Sec. 52. 22 MRSA, § 2384,** as last repealed and replaced by PL 1973, c. 510, is repealed.

**Sec. 53. 22 MRSA, §§ 2385 and 2386,** as last amended by PL 1971, c. 472, § 4, are repealed.

**Comment***

These sections are all covered in chapter 45 of the Criminal Code.

**Sec. 54. 22 MRSA, § 2388,** as enacted by PL 1973, c. 788, § 88, is repealed.

**Comment***

This is covered by chapter 45, sections 1104 and 1106 of the Criminal Code.

**Sec. 55. 34 MRSA, § 133** is repealed.

**Sec. 56. 34 MRSA, § 527, 4th ¶,** as last repealed and replaced by PL 1973, c. 381, is repealed.

**Sec. 57. 34 MRSA, § 594** is repealed.

**Sec. 58. 34 MRSA, § 705, first 2 sentences,** as amended by PL 1965, c. 210, are repealed as follows:

~~Each convict, whose record of conduct shows that he has faithfully observed all the rules and requirements of the State Prison, shall be entitled to a deduction of 7 days a month from the minimum term of his sentence, commencing on the first day of his arrival at the State Prison. An additional 2 days a month may be deducted from the sentence of those convicts who are assigned duties outside the prison walls or security system, or those convicts within the prison walls who are assigned to work deemed by the Warden of the State Prison to be of sufficient importance and responsibility to warrant such deduction~~

**Sec. 59. 34 MRSA, § 710,** as last amended by PL 1973, c. 647 is repealed.

**Sec. 60. 34 MRSA, § 753** is repealed.

**Sec. 61. 34 MRSA, § 753-A,** as enacted by PL 1971, c. 539, § 23, is repealed.

**Sec. 62. 34 MRSA, § 754** is repealed.

**Sec. 63. 34 MRSA, § 755,** as last amended by PL 1973, c. 75, is repealed.

**Sec. 64.** **34 MRSA, § 756,** as last amended by PL 1973, c. 582, § 7, is repealed.

**Sec. 65.** **34 MRSA § 802,** as last amended by PL 1971, c. 544, § 118-B, is repealed.

**Sec. 66.** **34 MRSA, § 807,** as last amended by PL 1973, c. 567, § 20, is repealed.

**Sec. 67.** **34 MRSA, § 853,** as last amended by PL 1973, c. 788, § 171, is repealed.

**Sec. 68.** **34 MRSA, § 859,** as last amended by P & SL 1973, c. 221, § 7, is repealed.

**Sec. 69.** **34 MRSA, § 865,** as enacted by PL 1967, c. 391, § 25, is repealed.

**Sec. 70.** **34 MRSA, §§ 1631 - 1634,** as amended, are repealed.

**Sec. 71.** **34 MRSA, §§ 1671 - 1679,** as amended, are repealed.

## STATEMENT OF FACT

By direction of the 105th Legislature (1971 P. & S. L., Ch. 147) a Criminal Law Revision Commission was created "to supervise the preparation of a proposed criminal code for the State of Maine" for presentation to the 107th Legislature. The proposed Code should be a "complete revision, redraft and rearrangement of all sections of the Revised Statutes pertaining to the criminal law," together with "necessary repealers, amendments and modifications of existing laws." The commission was empowered to propose such "new or modified provisions as, in its judgment, would best serve the interests of the people of the State." This legislative document is the commission's proposed Criminal Code.

Additional statements of fact identified as "Comment*" are interspersed throughout the text to amplify the meaning of individual sections.