

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE
1954

1959 CUMULATIVE SUPPLEMENT

ANNOTATED

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Chapter 134.

Crimes against Chastity, Morality and Decency. Sunday Activities.

Sexual Crimes.

Sec. 3. Crime against nature.

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

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

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

Sec. 6. Indecent liberties.

Testimony of earlier happenings, etc.

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

Sentence.—Defendant, who pleaded guilty to an indictment in two counts charging the offense of taking indecent liberties on June 20, 1945, and the conviction and sentence for a prior similar offense in 1936 was properly sentenced for 20 years pursuant to provisions of ch. 149, § 3,

since provisions of ch. 149, § 11 requiring sentence for minimum and maximum terms did not apply to prosecutions under ch. 134, § 6 for taking of indecent liberties (ch. 149, § 12). *Carr v. State*, 151 Me. 226, 117 A. (2d) 63.

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

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

Houses of Ill Fame. Prostitution.

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

No female who shall be convicted of violating any of this section shall be placed on probation or on parole in the care or charge of any person except a woman probation-parole officer. (R. S. c. 121, § 12. 1959, c. 307, § 4.)

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

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

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

Nor does sexual vice require commercialization to become a menace to public health in the communication or spread of venereal

disease. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559.

By the inclusion of lewdness in its prohibitions in § 12 and by its definition of lewdness "as any indecent or obscene act," in § 13, it is indicated that the legislature was also comprehensively attempting to deter vice itself. It would be a drastic contraction of the purport of the language employed to conclude that the legislature was singly dedicated to the prevention or containment of physical disease. There is nothing in the statute to indicate that the carrying on of commercialized vice upon the premises is an essential to guilt nor does the act require that for conviction more than an isolated act shall have been alleged and committed. *State v. Seaburg*, 154 Me. 210, 145 A. (2d) 559. See also notes to § 13.

By this section an added category of distinct criminal offenses was listed and

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

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

Indictment for procuring or soliciting.—

Sec. 13. "Prostitution", "lewdness", "assignation", defined.

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

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

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

Sec. 16. Procurement for prostitution.

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

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

Immoral Literature, Pictures, Exhibitions and Advertisements.

Sec. 24. Distribution and sale of publications depicting crime and torture.—Whoever sells, rents, displays for sale, loans, gives or distributes to any person or offers for sale to such a person or has in his possession, actual or constructive, any pamphlet, magazine, comic book, picture, picture book or film which contains illustrations of sadism, masochism, sexual perversion, bestiality or lust shall be punished by imprisonment for not more than 30 days or by fine of not more than \$50. Under this section it shall be necessary to prove that the defendant knows, or by the exercise of reasonable diligence should know, of the offensive picture contained in the literature involved. This section shall not apply to any medical examiner, county attorney, state attorney, police officer, sheriff or physician while in the performance of their professional or official duties. (R. S. c. 121, § 24. 1957, c. 321, § 1. 1959, c. 279.)

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

The 1959 amendment substituted "any person" for "a child under 18 years of age," substituted "person or has in his possession, actual or constructive" for "child," added "or film" after "picture

book," deleted "fictional" after "contains" and deleted "or of physical torture of human beings" after "lust" in the first sentence, added "or by the exercise of reasonable diligence should know" in the second sentence and added the third sentence.

Sec. 27. Circulation or posting of obscene pictures, handbills, etc.; distribution of certain publications by minors; jurisdiction.—Who-

ever circulates, posts or causes to be circulated or posted in any conspicuous or public place any picture, handbill or poster containing obscene, indecent or immoral representations; or in any manner hires, uses or employs any minor to sell or give away, or in any manner to distribute, or who, having the care, custody or control of any minor, permits such minor to sell or give away, or in any manner to distribute any book, magazine, pamphlet or newspaper as described in this section shall be punished by a fine of not less than \$50 nor more than \$100 or by imprisonment for not more than 11 months, or by both. Trial justices within their county shall have, by complaint, jurisdiction of the offenses mentioned in this section, original and concurrent with municipal courts and the superior court. (R. S. c. 121, § 27, 1957, c. 321, § 2.)

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

maximum imprisonment from 6 months to 11 months in the first sentence.

Editor's note.—The publications referred to are no longer described in this section. See now § 24 of this chapter re publications depicting crime and torture.

Lord's Day. Memorial Day. Disturbance of Religious Meetings. Sunday Sports, Moving Pictures and Bowling.

Sec. 38-A. Sunday sales of motor vehicles and mobile homes prohibited.—Any person who shall carry on or engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles or mobile homes; or who shall open any place of business or lot wherein he attempts to or does engage in the business of buying, selling, exchanging, dealing or trading in new or used motor vehicles or mobile homes; or who does buy, sell, exchange, deal or trade in new or used motor vehicles or mobile homes as a business on the first day of the week, commonly known and designated as Sunday, is a disorderly person. Such a disorderly person upon conviction for the first offense shall be punished by a fine of not more than \$100 or by imprisonment for not more than 10 days, or by both; and for the second offense shall be punished by a fine of not more than \$500 or by imprisonment for not more than 30 days, or by both; and for the third or each subsequent offense shall be punished by a fine of not more than \$750 or by imprisonment for not more than 6 months, or by both. If the person is the holder of dealer or transit registration plates under chapter 22, sections 26 or 26-A, such person shall also be subject to the suspension or revocation of said plates, as provided for in chapter 22, section 27, for the violation of this section. (1959, c. 302, § 2.)

Chapter 135.

Crimes against Public Justice and Official Duty.

Perjury and Subornation of Perjury.

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

I. GENERAL CONSIDERATION.

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

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

The proceeding in which perjury is committed must be a pending proceeding. This