

MAINE STATE LEGISLATURE

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ALERT

OCTOBER 1971

CRIMINAL DIVISION

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE

FROM THE LEGISLATURE

This issue of the ALERT Bulletin is devoted to a presentation and brief discussion of the legislation passed by the Maine State Legislature this past session which directly relates to law enforcement officers. Some of these bills are entirely new and others are amendments to previously existing legislation. In order to avoid any confusion, each piece of legislation will be set out in full as it now stands in the statute books. If the entire bill is new, the entire bill will be set in bold print. Otherwise, only the amended portion of the bill will be printed in bold.

Where the bill is self-explanatory or too involved to be discussed within the confines of this issue, there will be no discussion or explanation of the bill. Where an explanation is necessary and feasible, an attempt will be made to briefly clarify the wording of the bill or to indicate its impact upon law enforcement officers. All discussion of the bills will be printed in *italics*.

AN ACT Revising the Implied Consent Law for Operation of Motor Vehicles

29 M.R.S.A. 1312 Implied consent to chemical tests; operation under the influence of intoxicating liquor; penalties

Any person who operates or attempts to operate a motor vehicle within this State shall be deemed to have given consent to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, if arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor.

He shall be informed by a law enforcement officer of the tests available to him, and said accused shall select and designate one of the tests. At his request he may have a test of his blood administered by a physician of his choice, if reasonably available.

1. Prerequisites to tests. Before any test specified is given, the law enforcement officer shall inform the arrested person of the consequences of his refusal to permit a test at the direction of the law enforcement officer.

If the law enforcement officer fails to comply with this prerequisite, any test results shall be inadmissible as evidence in any proceeding before any administrative officer or court of this State.

2. Hearing. If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, none shall be given. The Secretary of State, upon the receipt of a written statement under oath of the arrest of a person for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, and that such person had refused to submit to a chemical test to determine his blood-alcohol level by analysis of his blood or breath, shall immediately notify the person, in writing, as provided in section 2241 that his license or permit and his privilege to operate have been suspended. Such suspension shall be for a period of 3 months for a first refusal under this or any prior implied consent provision under Maine law. If such refusal is a 2nd or subsequent refusal under this or any prior implied consent provision under Maine law, such suspension shall be for a period of 6 months.

If such person desires to have a hearing, he shall notify the Secretary of State within 10 days, in writing, of such desire. Any suspension shall remain in effect pending the outcome of such hearing, if requested.

The scope of such a hearing shall cover whether the individual was lawfully placed under arrest and whether he refused to submit to one of the tests upon the request of a law enforcement officer.

If it is determined, after hearing when such is requested, that such person was not arrested or did not refuse to permit a chemical test to determine his blood-alcohol level by analysis of his blood or breath, any suspension in effect shall be removed immediately.

3. Review. Any person, whose license, permit or privilege to operate is suspended for refusal to a chemical test to determine his blood-alcohol level by analysis of his blood or breath at the direction of a law enforcement officer after having been arrested for operating or attempting to operate while under the influence of intoxicating liquor, shall have the right to file a petition in the Superior Court in the county where he resides, or in Kennebec County, to review the order of suspension by the Secretary of State by the same procedure as is provided in section 2242.

4. Results of test. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney by the law enforcement officer.

5. Blood-alcohol level.

A. If there was, at the time alleged, 0.05% or less by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was not under the influence of intoxicating liquor.

B. If there was, at the time alleged, in excess of 0.05%, but less than 0.10% by weight of alcohol in the defendant's blood, it is relevant evidence, but it is not to be given prima facie effect in indicating whether or not the defendant was under the influence of intoxicating liquor within the meaning of this section, but such fact may be considered with other competent evidence in determining whether or not the defendant was under the influence of intoxicating liquor.

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C. If there was, at the time alleged 0.10% or more by weight of alcohol in the defendant's blood, it is prima facie evidence that the defendant was under the influence of intoxicating liquor within the meaning of this section.

D. Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred milliliters of blood.

6. Administration of tests. Persons conducting chemical analysis of blood or breath for the purpose of determining the blood-alcohol level shall be certified for this purpose by the Department of Health and Welfare under certification standards to be set by that department.

Only a duly licensed physician, registered nurse or a person certified by the Department of Health and Welfare under certification standards to be set by that department, acting at the request of a law enforcement officer, with the consent of the defendant, may draw a specimen of blood for the purpose of determining the blood-alcohol level thereof. This limitation shall not apply to the taking of breath specimens.

A law enforcement officer, with the consent of the person from whom the sample is to be taken, may take a sample specimen of the breath of any person arrested for operating or attempting to operate a motor vehicle while under the influence of intoxicating liquor, said sample specimen to be submitted to the Department of Health and Welfare or a person certified by the Department of Health and Welfare for the purpose of conducting chemical tests of the sample specimen to determine the blood-alcohol level thereof.

Only such equipment as is approved by the Department of Health and Welfare shall be used by a law enforcement officer to take a sample specimen of the defendant's breath.

7. Liability. No physician, registered nurse or person certified by the Department of Health and Welfare in the exercise of due care shall be liable in damages or otherwise for any act done or omitted to be done in performing the act of collecting or withdrawing specimens of blood at the request of a law enforcement officer pursuant to this section.

8. Evidence. The percentage by weight of alcohol in the defendant's blood at the time alleged, as shown by the chemical analysis of his blood or breath shall be admissible in evidence.

9. Payment for tests. Persons authorized to take specimens of blood at the direction of a law enforcement officer and persons authorized to perform chemical tests of specimens of blood or breath shall be paid from the General Fund.

10. Penalties.

A. Whoever shall operate or attempt to operate a motor vehicle within this State while under the influence of intoxicating liquor or drugs, upon conviction for a first offense, shall be punished by a fine of not more than \$200 or by imprisonment for not more than 90 days, or by both; and whoever is convicted of a 2nd or subsequent offense shall be punished by a fine of not more than \$1000, or by imprisonment for not more than 6 months, or by both. The license or permit and privilege to operate of any person convicted of a first violation of this section shall be immediately suspended for 4 months by the Secretary of State upon receipt of an attested copy of the court record of such conviction.

If any person found guilty of a violation of this section shall appeal from the judgment or sentence of a court, the operator's license or permit and privilege to operate a motor vehicle in this State shall be suspended during the time an appeal is pending, unless such court shall otherwise order, or unless the Secretary of State, after hearing, shall restore the license, permit or privilege to operate pending decision on the appeal.

Any person convicted of a 2nd violation of this section shall have his license or permit and privilege to operate a motor vehicle in this State suspended for a period of one year except after 6 months he may petition the Secretary of State for a license or permit, who, after hearing and after his determination that public safety will not be endangered by issuing a new license may issue such license or permit, with or without conditions thereto attached.

Any person convicted of a 3rd violation of this section shall have his license or permit and privilege to operate a motor vehicle in this State suspended for a period of 3 years, except that such person may petition the Secretary of State for a hearing to consider whether his license should be restored after 2 years from the date of said suspension of his license, permit or privilege to operate a motor vehicle. The Secretary of State, after

hearing, may restore the license and privilege to operate a motor vehicle, with or without conditions or restrictions, and under such terms as he may deem advisable, having in mind the safety of the public and the welfare of the petitioner.

Any person convicted of a 4th or subsequent violation of this section shall have his license or permit and privilege to operate suspended and no subsequent license or permit or privilege to operate shall be granted to such person, except that such person may petition the Secretary of State after 5 years from the date of said suspension for a special license or the privilege to operate, and the Secretary of State, after being satisfied beyond a reasonable doubt that the petitioner has refrained from the use of intoxicating liquor or drugs for a period of 5 years next preceding the date of hearing on said petition, may issue a license, permit or grant the privilege to operate, conditioned upon the continued nonuse of intoxicating liquor or drugs and such other conditions as he may deem proper.

For the purposes of this section, prior convictions of operating or attempting to operate while under the influence of intoxicating liquor, operating or attempting to operate while impaired by the use of intoxicating liquor, or operating or attempting to operate while intoxicated by the use of intoxicating liquor, shall be considered prior convictions of operating or attempting to operate under the influence of intoxicating liquor, provided that the prior conviction is within a 10-year period of the date of the last offense.

For the purpose of this section, prior convictions of operating or attempting to operate while under the influence of drugs, operating or attempting to operate while impaired by the use of drugs, or operating or attempting to operate while intoxicated by the use of drugs, shall be considered prior convictions of operating or attempting to operate under the influence of drugs, provided that the prior conviction is within a 10-year period of the date of the last offense. Any suspensions of a license, permit and privilege to operate for conviction under this section shall run consecutively to any suspension imposed for refusal to submit to a chemical test to determine blood-alcohol level by analysis of blood or breath, except where the conviction is the result of a plea of guilty in the District Court

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prior to trial or a waiver of trial and finding of guilty by the court.

B. Any officer authorized to arrest for violations of this section may arrest, without a warrant, any person involved in a motor vehicle accident, if the officer has probable cause to believe that such person has violated this section.

C. Every person operating a motor vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this Title shall, at the request of a police officer, submit to a breath test to be administered by the police officer. If such test indicates that the operator has consumed alcohol, the police officer may require such operator to submit to a chemical test in the manner set forth in this section.

D. In alleging a prior conviction under this section; Title 15, section 757, shall not apply. After a conviction for violation of this section the Court shall conduct an inquiry to determine whether or not the defendant has been convicted of any offenses which are considered to be prior offenses for the purposes of this section. Certified copies of the record of a prior conviction or convictions from the Secretary of State or any court of record shall be admissible and upon receipt of any such copy and upon being satisfied that the defendant is the person named in that certified copy, the court shall treat the present conviction as a subsequent conviction and sentence the defendant accordingly.

COMMENT: The purpose of this bill generally is to create a broadened Implied Consent Law in regard to the drinking driver, including the addition of chemical testing of blood-alcohol by analysis of breath. This bill will have a great impact on the daily duties of law enforcement officers in Maine and its implications should be discussed in detail. However because of lack of space, we are unable to treat it fully in this issue. Therefore, hopefully, we will devote an entire issue of ALERT in the future to a discussion of the new Implied Consent Law.

AN ACT Relating to Jurisdiction of Municipal Police Officers in Fresh Pursuit

30 M.R.S.A. 2402

Extent of criminal authority

Except for the purpose of retaking a prisoner whom he has arrested and

who has escaped, or for the purpose of taking a person before the District Court, or for the purpose of executing a mittimus given to him by such a court, or for the purpose of pursuing a person who has gone into another town and for whose arrest a constable or a city marshal has a warrant, no constable of the several towns or city marshal of the several cities shall have any authority in criminal matters beyond the limits of the town or city in which he is elected or chosen.

30 M.R.S.A. 2402-A. Arrest in other municipalities

Every municipal police officer in fresh pursuit of a person who travels beyond the limits of the municipality in which the officer is appointed shall have the same power to arrest such person as the officer has within the said municipality. This section shall apply to both felonies and misdemeanors.

With respect to felonies, the term "fresh pursuit" as used in this section shall be as defined in Title 15, section 152; with respect to misdemeanors "fresh pursuit" shall mean instant pursuit of a person with intent to apprehend.

COMMENT: Municipal law enforcement officers already have the authority to pursue fleeing felons outside the boundaries of their municipalities or bailiwicks. However, previous to this act, the law made no provision for fresh pursuit outside the law enforcement officer's bailiwick in cases of misdemeanors. This new section authorizes municipal law enforcement officers to pursue an offender across city boundaries for the purpose of apprehending the offender provided the pursuit is started promptly and maintained continuously. Officers will find this act especially useful when pursuing traffic offenders.

See the August 1971 ALERT for a more complete discussion of fresh pursuit in general.

AN ACT Relating to the Possession and Sale of Certain Hallucinogenic Drugs

COMMENT: This act repeals, replaces and amends several of the existing drug laws as follows:

The present law on the sale of opium (22 M.R.S.A. 2206), is repealed.

The present law on possession of certain drugs (22 M.R.S.A. 2212-B) is repealed and replaced by the following.

22 M.R.S.A. 2212-B. Possession of certain hallucinogenic drugs

Whoever, except the laboratory of the of the Department of Health and Welfare, is in possession of certain hallucinogenic drugs shall upon conviction thereof be punished by a fine of not more than \$1,000 or by imprisonment for not more than 2 years, or by both. Such hallucinogenic drugs shall include any of the following substances, their optical isomers, and their salts: D-lysergic acid diethylamide (LSD or LSD-25); 2, 5-dimethoxyamphetamine; dimethyltryptamine (DMT); diethyltryptamine (DET); dipropyltryptamine (DPT); psilocin; psilocybin; bufotenine; ibogaine; tetrahydrocannabinol (THC); 4-methyl-2, 5 dimethoxyamphetamine (DOM or ST-P); phencyclidine (PCP); 3, 4-methylenedioxyamphetamine (MDA); 2, 3-methylenedioxyamphetamine; methoxymethylenedioxyamphetamine (MMDA), including all position isomers; trimethoxyamphetamine (TMA), including all position isomers; N-ethyl piperidyl benzilate (JB-318), including all position isomers; N-methyl piperidyl benzilate (JB-336), including all position isomers.

Title 22 of the Revised Statutes is amended by adding a new section 2212 C-to read as follows:

22 M.R.S.A. 2212-C. Selling of certain hallucinogenic drugs

Whoever, except the laboratory of the Department of Health and Welfare, sells, exchanges, delivers, barter, gives or furnishes any of the substances listed in section 2212-B shall upon conviction thereof be punished by a fine of not more than \$3,000 or by imprisonment for not more than 10 years, or by both for the first offense; and for a 2nd or subsequent offense, by imprisonment for not less than 2 years nor more than 10 years for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The present law on the uses of narcotic drugs (22 M.R.S.A. 2362) is repealed and replaced by the following:

22 M.R.S.A. 2362. Uses of narcotic drugs

Whoever shall manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug, except as authorized in this chapter, shall upon conviction thereof be punished by a fine of not more than \$50,000 or by imprisonment for not more than 20 years, or by both for the first offense; and for a 2nd or subsequent offense, by imprisonment for not less than 5 years nor more than 20 years

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for which the imposition or execution of such sentence shall not be suspended and probation shall not be granted.

The present law on hallucinatory drugs (22 M.R.S.A. 2368-A) is repealed.

The effect of this act is to eliminate the present sale of opium law, which treated the offense as a misdemeanor and to concentrate on violations regarding narcotic drugs in 22 M.R.S.A. 2362, making the various offenses felonies and providing stiff penalties. This bill further expressly lists all hallucinogenic drugs and provides separate penalties for possession and sale of these hallucinogenic drugs.

AN ACT Relating to the Sale of Marijuana

22 M.R.S.A. 2382. Definitions

1. Cannabis. "Cannabis", sometimes called marijuana or marihauna, includes all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stocks of such plant, fiber produced from such stocks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stock, resin extracted therefrom, fiber, oil or cake, or the sterilized seed of such plant which is incapable of germination. "Cannabis" shall be taken to include any synthetic substitute for such substance or any salts, compounds, derivatives or preparations thereof.

2. Peyote. "Peyote", true name *Lophophora*, sometimes called Mescal Buttons of *Anhalonium*, including any or all parts of the cactus, genus *Lophophora*, whether growing or not, the extract from the plant, and any salt, compound or derivative of the same.

3. Sale. "Sale" includes barter, exchange or gift, or offer thereof, and each transaction made by any person, whether it is principal, proprietor, agent, servant or employee.

2383. Possession

1. Manufacture or possess. Whoever manufactures, cultivates, grows, possesses or has under his control Cannabis, Mescaline or Peyote, except as authorized by this chapter, shall be punished for the first offense, by a fine of not more than \$1,000 and by imprisonment for not more than 11 months; and, for any subsequent offense, by a fine of not more than \$2,000 and by imprisonment for not more than 2 years.

2. Present. Whoever, knowingly, is present where Cannabis, Mescaline or Peyote is kept or deposited, or who ever is in the company of a person, knowing that said person is in possession of Cannabis, Mescaline or Peyote, shall be punished by a fine of not more than \$1,000 and by imprisonment for not more than 11 months.

3. Enforcement. Any sheriff, deputy sheriff, municipal or state police officer, if he has probable cause to believe that a violation of this section has taken place, may arrest without a warrant, any person for violation of this section whether or not that violation was committed in his presence.

§ 2384. Sale

Whoever sells, exchanges, delivers, barter, gives or furnishes Cannabis, Mescaline or Peyote, to any person shall upon conviction thereof be punished by a fine of not more than \$1,000 or by imprisonment for not more than 5 years, or by both, for the first offense; and for a 2nd or subsequent offense, by imprisonment for not less than 2 years nor more than 10 years, for which the imposition or execution of such sentence shall not be suspended and probation not be granted.

§ 2385. Persons exempted

The provisions of this chapter restricting the possession of Cannabis, Mescaline or Peyote shall not apply to public officers or their employees in the performance of their official duties requiring possession or control of Cannabis, Mescaline or Peyote; nor to temporary, incidental possession by persons who are aiding public officers in performing their official duties.

§ 2386. Cannabis, Mescaline and Peyote; contraband

Cannabis, Mescaline or Peyote unlawfully in the possession or under the control of any person and which are kept and deposited in the State or intended for unlawful sale or sold in the State, and the vessels in which they are contained, are contraband and forfeited to the State of Maine at the time when they are seized.

COMMENT: The purpose of this bill is to clear up an inconsistency in the definition of Cannabis and to add Mescaline to Cannabis and Peyote as a prohibited substance. The section relating to sale of these substances (2384) has also been changed.

AN ACT To Provide Mandatory Penalties for Commission of a Crime with a Firearm.

COMMENT: This act provides for a separate and additional penalty to be imposed upon any criminal offenders who carry a gun while committing a crime. It is in fact an amendment to several of the Crimes set out in Title 17 of the Maine Revised Statutes Annotated. Since it would be overly repetitious to set out each of these crimes along with its amendment relating to firearms, only one of the statutes, that relating to abduction of women, will be quoted. The remainder of the crimes affected by this amendment will be listed and accompanied by brief descriptions. All the crimes listed have been amended in a similar manner to the quoted statute on abduction of women. However, to obtain the exact wording, the statutes themselves should be consulted.

17 M.R.S.A. 1. Abduction of women

Whoever takes a woman unlawfully and against her will and by force, menace or duress compels her to marry him or any other person, or to be defiled, shall be punished by imprisonment for any term of years. Whoever so takes a woman, with intent by such means to compel her to do so, shall be punished by imprisonment for not less than one year nor more than 10 years.

17 M.R.S.A. 2. Abduction of women while armed with firearm

Whoever, if armed with a firearm, takes a woman unlawfully and against her will and by force, menace or duress compels her to marry him or any other person or to be defiled shall be punished by imprisonment for any term of years. Whoever, if armed with a firearm, takes a woman with intent by such means to compel her to do so shall be punished by imprisonment for not less than 2 nor more than 25 years. The imposition or execution of a sentence for a violation of this section shall not be suspended and probation shall not be granted.

The other statutes affected by the amendment relating to firearms are as follows:

17 M.R.S.A. 161-163	Arson
17 M.R.S.A. 201	Assault and Battery
17 M.R.S.A. 202	Assault with Intent to Commit a Felony
17 M.R.S.A. 251	Attempt to Commit an Offense
17 M.R.S.A. 751	Burglary
17 M.R.S.A. 753	Assault with Intent to Commit Burglary
17 M.R.S.A. 754	Breaking and Entering with intent to Commit Felony or Larceny

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17 M.R.S.A. 1404	Forcibly rescuing, furnishing means or otherwise aiding an escape
17 M.R.S.A. 1405	Escapes from Jail
17 M.R.S.A. 1951	Indecent Liberties
17 M.R.S.A. 2051	Kidnapping
17 M.R.S.A. 2551	Manslaughter
17 M.R.S.A. 2601	Mayhem
17 M.R.S.A. 2602	Assault with intent to maim
17 M.R.S.A. 2656	Assault with intent to murder
17 M.R.S.A. 3151	Rape and Carnal Knowledge
17 M.R.S.A. 3153	Assault with intent to commit a rape
17 M.R.S.A. 3401	Robbery
17 M.R.S.A. 3402	Assault with intent to rob or steal
34 M.R.S.A. 710	Assaulting prison officer, escape, or attempt to escape
34 M.R.S.A. 753	Rescue or aiding escape

Also a new chapter (132) has been added to Title 17 of the Maine Revised Statutes to provide certain definitions under the new firearm law. This new chapter is quoted below.

17 M.R.S.A. 4001. Definitions

The following words, terms and phrases when used in this Title and in Title 34 shall have the meaning ascribed to them in this section.

1. Armed. "Armed" means armed with a firearm.

2. Firearm. "Firearm" shall include any pistol, revolver, rifle, shotgun, machinegun, automatic and semiautomatic rifle or other firearm as the term is commonly used, or any gun, device or instrument in the nature of a weapon from which may be fired or projected any solid projectile or slug, pellet, missile or bullet or any gas, vapor or other noxious thing by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or any other instrument that has the appearance of a firearm even though not capable of discharging a projectile.

AN ACT Relating to Bail or Personal Recognizance for Misdemeanors

14 M.R.S.A. 5544. Admission to bail before commitment; on Lord's Day

Any person under arrest for a bailable criminal offense may, before commitment to jail if he so requests, be taken by the officer having him in

charge before a bail commissioner, who may inquire into the case and admit him to bail. Any person arrested on the Lord's Day, or on the afternoon or evening preceding, for a bailable offense, may be admitted to bail on that day by such commissioner.

Any arresting officer may either take any person under arrest for a misdemeanor, excepting persons arrested for violation of Title 17, section 2001, before a bail commissioner, who shall inquire into the charge and pertinent circumstances and admit him to bail if proper, or without fee may take the personal recognizance of any person for his appearance on a misdemeanor charge.

Any person who has been arrested and bailed shall be issued a written summons to appear in court and such person shall give a written promise to the arresting officer or bail commissioner to so appear. It shall be unlawful for any person to violate his written promise to appear in court, either by himself or his attorney. Any person who violates this section shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both.

COMMENT: The main impact of this amendment is to permit law enforcement officers to release persons arrested for misdemeanors, just as they presently can do on motor vehicle violations, on their personal recognizance. A penalty is provided for any person who violates his written promise to appear in Court.

In order to properly carry out the dictates of this statute, the law enforcement officer will need forms for the summons to appear in court and also for the written promise of the arrested person to appear in court. These forms are presently being prepared by the Criminal Division of the Attorney General's Office and will be made available to all concerned law enforcement officers in the near future.

It should also be noted that the provisions of this statute, as amended, do not apply to arrests for public intoxication under 17 M.R.S.A. 2001. Procedures to be followed under that act are discussed below.

AN ACT Relating to Public Intoxication and disturbance

Whoever is found intoxicated in any street, highway or other public place, or is found intoxicated in a motor vehicle while said motor vehicle is in any street, highway or other public place, shall be punished for the first offense by a fine of not more than \$20 or by imprisonment for not more than 30 days, or by

both, and upon any subsequent conviction by a fine of not more than \$60 or by imprisonment for not more than 90 days, or by both.

Whoever is found intoxicated in his own house or in any other building or place, disturbing the peace of his own or any other family or the public peace, shall be punished for the first and any subsequent conviction as provided in the preceding sentence. Any such intoxicated person shall be taken into custody by any sheriff, deputy sheriff, liquor inspector, constable, marshal, police officer or watchman and committed to the watchhouse or police station or restrained in some other suitable place, until a complaint can be made and a warrant issued against him, upon which he may be arrested and tried.

Within 18 hours after an accused is taken into custody, if it appears to the arresting officer that the accused is not a danger to himself or others, with the written consent of the accused, the accused may be released from custody and no complaint shall issue. After such release the arresting officer or the officer in charge may, with the written consent of the accused, make such arrangements to transport the accused to his home or some other suitable place as may be reasonable under the circumstances.

COMMENT: This amendment provides a procedure for releasing persons arrested for public intoxication, thus providing for the exception made in the above discussed statute relating to release on bail or personal recognizance for other misdemeanors. The procedure for releasing intoxicated persons differs from that for the other misdemeanors in that it is an outright release not conditional on the person's promise to appear in court at a later date and not requiring the issuance of a summons. However, under the public intoxication statute, the arresting officer must obtain the arrested persons consent to be released and also his consent for the officer to make arrangements for his transportation home. Forms for this purpose are also presently being prepared by the Criminal Division and will be released to all concerned law enforcement officers in the near future.

AN ACT Relating to Lascivious Speech or Behavior in Public Places

17 M.R.S.A. 3758. Lascivious speech or behavior in public places

Whoever is lascivious in speech or behavior in any public place, upon conviction, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or by both.

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COMMENT: This bill repeals and replaces the old section 3758 dealing with undesirable persons generally. The purpose of the new statute is to attempt to remove the unconstitutional provisions of the old statute.

AN ACT Relating to Criminal Trespass in Buildings and on Premises

17 M.R.S.A. 3854. Entry of and refusal to vacate certain buildings

1. Definitions. As used in this section:

A. "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft used for overnight lodging of persons; or used by persons for carrying on instruction, study, worship, recreation or business therein, but shall not include any publicly owned buildings.

B. "Premises" includes the term "building" as defined in paragraph A.

2. Entry of certain buildings. Whoever willfully enters any dwelling house, camp, cottage or locked building, without the permission of the owner or occupant thereof, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days, or by both.

3. Refusal to vacate. Whoever refuses or fails to leave the premises of a private degree-granting educational institution during those hours of the day or night when the premises are regularly closed, upon being requested to do so by a guard, watchman or custodian employed by said institution, if the circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue, shall be punished as provided in subsection 2.

COMMENT: The purpose of this bill is to deal with "sit-in" situations where persons refuse to leave buildings when requested to do so.

AN ACT Relating to the Maine Law Enforcement and Criminal Justice Academy.

17 M.R.S.A. 2801. The Maine Law Enforcement and Criminal Justice Academy.

There is created a law enforcement and criminal justice training facility to be known as "The Maine Law Enforcement and Criminal Justice Academy" which shall be established at some convenient and suitable place in the Augusta area as the Board of Commissioners, hereinafter established, may determine.

17 M.R.S.A. 2802. Membership

The Maine Law Enforcement and Criminal Justice Academy shall be under the direct control and supervision of a Board of Commissioners consisting of 10 members as follows: The Attorney General, the Chief of the Maine State Police, ex officio, and the following to be appointed by the Governor with the advice and consent of the Council: A sheriff, 3 other persons who shall be officers of municipal police departments, an educator, a representative from a criminal justice agency not involved in the general enforcement of Maine criminal laws, a representative of a federal law enforcement agency and a municipal public official.

The members of the board shall serve for a term of 3 years unless they are serving ex officio, in which event they shall serve until their term expires and their successors are duly appointed and qualified. Members of the board shall serve without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties. Any vacancy on the Board of Commissioners shall be filled in the same manner as the original appointment, but for the unexpired term.

17 M.R.S.A. 2803. Duties

The duties of the Board of Commissioners shall be to implement the establishment of The Maine Law Enforcement and Criminal Justice Academy in order to provide a facility for the training and education of municipal police officers and other law enforcement and criminal justice personnel; to supervise its operation and its training programs; the right to employ all personnel which may reasonably be required to carry out the purposes of this chapter; the right to lease, rent or acquire adequate facilities to house The Maine Law Enforcement and Criminal Justice Academy and to conduct proper and adequate training programs; to provide and conduct training programs both at a basic level and at an advanced training level for such periods of time during each calendar year as the Board of Commissioners may determine, but it shall conduct at least 3 basic and 3 advanced training courses during each calendar year: to accept such funds or grants from public or private sources as may be available to carry out or implement its purposes; to establish reasonable fees for attendance to defray part of the cost; and to make its training program available to all law enforcement agencies for personnel.

The Board of Commissioners may appoint and employ an individual, subject to the terms of the Personnel Law, to act as director or administrator of the

academy to plan, direct and supervise the day-to-day operation of the police training facility and he shall be charged with the responsibilities of carrying out the policy and procedures as established by the Board of Commissioners for the purposes of this chapter.

All full-time personnel employed by Board of Commissioners shall be employed subject to the Personnel Law.

17 M.R.S.A. 2804. Meetings

The Board of Commissioners shall meet at such time or times as may be reasonably necessary to carry out their duties, but it shall meet at least once in each calendar quarter at such place and time as the board shall determine and it shall meet at the call of the chairman. The board shall organize annually by electing a chairman, vice-chairman secretary and a treasurer from among its members.

COMMENT: The purpose of this bill is to allow the formerly named Maine Police Academy to broaden its instruction to encompass all components of the criminal justice field and to enlarge the Board of Commissioners so as to provide a broader representation of the criminal justice field.

AN ACT Relating to Qualifications for Municipal Law Enforcement Officers

17 M.R.S.A. 2805. Qualifications

1. Basic training. All municipal full-time law enforcement officers shall be required to take during the first year of their employment a 6-week basic training course approved by the board (Board of Commissioners) at a school approved by the board. This section shall not apply to any person employed as a law enforcement officer on the effective date of this Act.

2. Definitions. For the purposes of this section:

A. "Full time" shall mean employment with the reasonable expectation of earning at least \$2,500 in any one calendar or fiscal year for performing law enforcement duties.

B. "Municipal law enforcement officers" shall mean any person empowered by a city or town to serve criminal processes and to arrest and prosecute offenders of the law.

3. In-service training. As a condition to the continued employment of any person as a law enforcement officer by any municipality said person shall be enrolled in an in-service training program approved by the board.

COMMENT: The intent of this legislation is to establish minimum training

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requirements for all municipal full-time law enforcement officers and thereby assure Maine citizens of law enforcement protection by adequately trained personnel.

AN ACT Providing for Adult Identification Cards under the Liquor Law

28 M.R.S.A. 1060. Adult identification cards

Any resident of the State or nonresident in the State 20 years of age or over may make application to the Liquor Commission for an adult identification card upon a form provided by the commission. The commission, upon receipt of an application, accompanied by a photograph of the applicant and such supporting documents and information as it may require, shall issue an identification card to the applicant bearing his photograph, together with his name, address, date of birth and such other information and identification as it may deem necessary. The identification card issued under this section shall not be valid until signed by the applicant.

There shall be a fee of \$1 for the issuance of an adult identification card.

Any person issued an identification card shall exhibit the same upon the demand of any licensee, his servant or agent, or any law enforcement officer in carrying out his duties relating to liquor, and failure to produce the card upon demand shall entitle the licensee to refuse to sell alcoholic beverages to the person in question.

Any person who misrepresents his age or practices any deceit in the procurement of an identification card or has in his possession a false identification card or uses or exhibits for the purpose of procuring alcoholic liquor an identification card belonging to another or which has been forged or altered, or any person who loans or transfers his identification card to another for use in the procurement of alcoholic beverages shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$25 nor more than \$500, or by imprisonment for not less than 5 days nor more than 11 months, or by both.

Any law enforcement officer who, in the performance of his duty, finds an identification card in the possession of a person other than the person to whom the same has been issued shall confiscate such card and return the same to the Liquor Commission.

The Liquor Commission shall have the power to adopt such rules and regulations as it shall deem necessary or advisable to effectuate the purposes of this section.

COMMENT: The purpose of this bill is to assure proper identification to protect liquor licensees.

AN ACT Relating to the Content of Motor Vehicle Operators' Licenses
29 M.R.S.A. 540. Contents of license

Each license shall state the name, age, place of residence of the licensee and the distinguishing numbers or marks assigned to him and may contain a brief description of the licensee for the purpose of identification and such other information as the said Secretary of State shall deem necessary. Every licensee shall indorse his usual signature upon the margin of the license before using it and no license shall be valid until so indorsed.

Licenses issued to persons under 20 years of age shall be printed on material of a different color than those issued to persons 20 years of age or older.

COMMENT: The purpose of this legislation is for more definite identification of minors.

AN ACT Relating to the Operation of Motor Vehicles

29 M.R.S.A. 1252. Speed regulations

1. Careful speed. Any person driving a vehicle on a way or in any other place shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to the traffic, surface and width of the way or place, and of any other conditions then existing.

29 M.R.S.A. 1311. Reckless driving

Whoever operates any vehicle, upon any way or in any other place recklessly, or in a wanton manner causing injury to any person or property shall be guilty of reckless driving and upon conviction shall be punished by a fine of not more than \$200, or by imprisonment for not more than 3 months, or by both; and whoever is convicted the 2nd or subsequent time for a violation of this section shall be punished by a fine of not more than \$500, or by imprisonment for not more than 11 months, or by both.

29 M.R.S.A. 1314. Driving to endanger

No person shall drive any vehicle upon a way or in any other place in such a manner as to endanger any person or property.

29 M.R.S.A. 1317. Motor vehicles in racing events

Sections 1252, 1311 and 1314 shall not apply to the operation of vehicles participating in racing events and exhibitions at which the public does not have access to the operating area and shall not apply to any private land to which the public does not have legal access.

COMMENT: The purpose of this bill is to allow for legal action against reckless or improper driving of motor vehicles in areas other than public ways.

AN ACT Relating to Falsely Assuming to be a Municipal Police Officer

17 M.R.S.A. 1451. Falsely assuming to be an officer

Whoever falsely assumes to be or impersonates a justice of the peace, notary public, health officer, state humane agent or any law enforcement officer, or who falsely acts as such, or who requires anyone to aid him in a matter pertaining to the duties of any such office which he does not hold, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

COMMENT: The purpose of this bill is to prohibit the false impersonation of a municipal police officer, together with the other enforcement officers already covered by the law.

AN ACT Relating to the Penalty for Larceny

17 M.R.S.A. 2101—Definition of Larceny

Whoever steals, takes and carries away, of the property of another, money, goods or chattels, or any writ, process, public record, bond, bank bill or note, promissory note, bill of exchange, order, certificate, book of accounts, conveyance of real estate, valuable contract, receipt, release, defeasance or instrument in writing whereby any demand, right or obligation is created, increased, diminished or extinguished is guilty of larceny; and shall be punished, when the value of the property exceeds \$500, by imprisonment for not more than 5 years; and when the value of the property does not exceed \$500, by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

COMMENT: The purpose of this bill is to expand the crime of petit larceny by increasing the limit on the value of goods stolen from \$100 to \$500 and to increase the possible term of imprisonment for petit larceny from 6 to 11 months. This bill is important for law enforcement officers because now, in order for the offense of larceny to be a misdemeanor, the value of the goods stolen must be less than \$500 rather than \$100 as under the old law. Therefore, for example, under the law of arrest without a warrant for misdemeanors, an officer has the authority to arrest for the theft of goods valued up to \$500 only if the offense was committed "in his presence". See July 1971 ALERT on Authority to Arrest.

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AN ACT Providing for Records of Sales of Used Merchandise

15 M.R.S.A. 456—Record of Sales of Used Merchandise

No dealer in used personal property other than coins, stamps, scrap materials, motor vehicles or bulk purchases from estates shall buy any used personal property from any person without first recording in a book kept for the purpose of a description of said personal property and the name and address of the seller of such property. Said record shall be made before said sale is completed and shall be open to the inspection of any law enforcement officer or prosecuting attorney. Any dealer who fails to keep such record or refuses to show the same to any law enforcement officer or prosecuting attorney shall be punished by a fine of not more than \$200. Whoever gives a false or fictitious name to said dealer shall be punished by a fine or not more than \$200 or by imprisonment for not more than 6 months. This section shall not apply to the sale of used personal property where the gross sales price is less than \$25 or to sales between dealers or to sales on consignment.

COMMENT: The purpose of this bill is to develop a record of ownership to pursue persons involved in crimes of stolen property.

NOTE: Other recently passed bills which may be of interest to law enforcement officers relate to the following topics:

- Jurisdiction of the District Court in Certain Felony Cases
- Habitual Offenders of Motor Vehicle Laws
- Appeals by the State on Questions of Law in Criminal Cases
- Improvement of Procedures in Post-Conviction Cases
- Snowmobiles
- Reporting of Accidents
- Arson
- Establishing the Maine Commission on Drug Abuse
- Trespass on Certain State Institutions
- Fees of Municipal Police Officers as Witnesses
- Creation of a Commission to Prepare a Revision of the Criminal Laws
- Mental Examination of Persons Accused of Crime
- Permits for Carrying Concealed Weapons
- Destruction of Vending Machines

Anyone interested in further information on any of these bills should contact this office at 289-2146.

MAINE COURT DECISIONS

Note: Cases that are considered especially important to a particular branch of the law enforcement team will be designated by the following code: J-Judge, P-Prosecutor, L- Law Enforcement Officer.

Waiver of Jury Trial; Due Process Attack JP

Appellant was charged with robbery and filed with the Court a Waiver of Jury Trial. He was found guilty by the Court and appealed on the ground that the Court erred in not asking him in open court whether the waiver was understandingly and voluntarily given, the failure to inquire being a violation of due process.

The Supreme Judicial Court held that it was unaware of any such requirement as to waiver of a jury trial, although such requirements would be required when a plea of guilty is given (Maine Rules of Criminal Procedure Rule 11). The Court distinguished between the two situations, the former being only defendant's choice of mode of fact finding, whereas the latter, when accepted, constitutes conviction involving much more serious consequences. The Court added that if the appellant wished to contend that the waiver was not voluntarily given, he should raise the issue by a petition for the Writ of Habeas Corpus, not by direct appeal. *State v. Chase*, 280 A. 2d 550 (Supreme Judicial Court of Maine, August, 1971).

Breaking and Entering with Intent to Commit Larceny; Sufficiency of Circumstantial Evidence JPL

Defendant was convicted of breaking and entering with intent to commit larceny. On appeal the defendant claimed that the circumstantial evidence was insufficient to support a guilty verdict. The Court held that it had been firmly established that a crime may be proven by circumstantial evidence, unless otherwise provided by statute. The Court indicated that all the necessary elements of the offense charged were shown: 1) an actual break was proven by showing that the window had been locked but was broken, and a rock found on the floor inside; 2) entry was shown, at least an entry by the hand of the intruder, by showing that a file box previously on the window sill was on the floor of the office, but its contents were spilled outside; 3) the intent to commit larceny was also circumstantially proven by the above facts; 4) the defendant could be identified as the culprit by testimony showing that he planned the break-in, by evidence that he was in the

area at the time of the break-in, and by his threats to a witness to his fleeing the building. Thus even though there was no direct evidence of the defendant breaking and entering the building, the Court held that the circumstantial evidence was sufficient so that the jury could find the defendant guilty beyond a reasonable doubt of the crime charged. *State v. Liberty*, 280 A. 2d 805 (Supreme Judicial Court of Maine, August 1971).

Indictment; Sufficiency JP

Defendant, who was convicted of disorderly conduct, appealed and moved to dismiss the complaint, alleging "that the complaint is legally insufficient to charge any criminal offense."

The complaint charged the defendant "... did by offensive and disorderly conduct and ... language annoy and interfere with one David Martino although such conduct and language did not ... amount to an assault and battery." The Supreme Judicial Court granted the motion to dismiss, ruling that the above complaint was insufficient. The Court relied on *State v. Houde*, 150 Me. 469, 114 A. 2d 366 (1955) holding that it still controlled and had not been altered by Maine Rules of Criminal Procedure 7c or Maine District Court Criminal Procedure Rule 3. That case required that the complaint must set forth facts which would enable the defendant to prepare a defense to meet the issues set forth and "give the court sufficient information to determine whether the facts alleged would support a conviction ..." (citing *State v. Strout*, 132 Me. 134, 167 A. 859 (1933). *State v. White*, 280 A. 2d 810 (Supreme Judicial Court of Maine, August, 1971).

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine.

ALERT

The matter contained in this bulletin is information for the criminal law community only. If there is any question as to the subject matter contained herein, the cases cited should be consulted. Nothing contained herein shall be considered as an Official Attorney General's opinion unless otherwise indicated.

Any change in personnel, or change in address of present personnel should be reported to this office immediately.

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