

MAINE STATE LEGISLATURE

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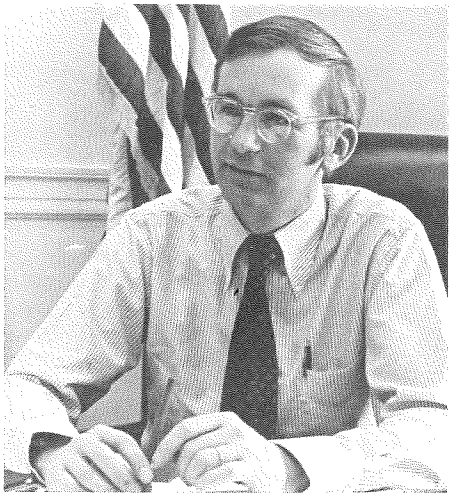
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ALERT

SEPTEMBER 1973

CRIMINAL DIVISION

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



MESSAGE FROM THE ATTORNEY GENERAL JON A. LUND

This issue of ALERT is devoted mainly to legislation passed by the regular session of the 106th Maine State Legislature. Some of the bills presented in this issue went into effect as emergency measures when they were approved; others did not go into effect until October 3, 1973, 90 days after the legislature adjourned. In either case, all bills will be effective when this issue of ALERT is published.

Many of these new laws will present new problems for Maine law enforcement officers. It is not our intent to deal in depth with these problems in this issue. Rather, the purpose of this issue is to acquaint members of the criminal justice system with the content and purpose of some of the new laws and to merely call their attention to others.

We will attempt to deal with enforcement problems created by some of these laws via the FORUM column in future issues of ALERT. In order that we may learn of your enforcement problems, I welcome all criminal justice personnel to write or call this office for needed guidance in enforcing any of the laws recently passed by the legislature. The number of the Criminal Division is 289-2146.

JON A. LUND
Attorney General

FROM THE LEGISLATURE

The following is a presentation and discussion of some of the important legislation passed by the Regular Session of the 106th Maine Legislature. Some bills create new law and others merely amend previously existing legislation. In order to avoid 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 existing legislation will be printed in **bold**. Those statutes which were amended by *deleting* some of their wording will be presented in regular print as they *now stand after the deletion*.

Self-explanatory bills will be quoted without comment. Bills that need clarification as to purpose, impact, or meaning and bills which are too long for quotation will be followed by a brief *italicized* comment.

AN ACT Creating the Uniform Alcoholism and Intoxication Treatment Act

COMMENT: This bill is too long to be quoted in full in this issue of ALERT. The purpose of the bill is stated in the act itself.

22 M.R.S.A. § 1361 It is the policy of this State that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages, but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

In furtherance of this policy, the act establishes a Division of Alcoholism with power to plan, establish, and maintain treatment programs for alcoholics and intoxicated persons and with various other powers and duties to develop a coordinated statewide mechanism for dealing with alcoholics and intoxicated persons. The entire bill must be read for details on comprehensive programs, regional facilities, standards for public and private treatment facilities, and rules for acceptance of treatment.

There are some provisions of the bill which directly affect law enforcement officers. These are:

22 M.R.S.A. § 1372. Treatment and services for intoxicated persons incapacitated by alcohol

1. An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility or other health facility by the police or the emergency service patrol.

2. A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police or the emergency service patrol and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for

[Continued on page 2]

incapacitated persons. The police or the emergency service patrol, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

22 M.R.S.A. § 1373. Emergency commitment

1. An intoxicated person who has threatened, attempted or inflicted physical harm on another and is likely to inflict physical harm on another unless committed, or is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not in itself constitute evidence of lack of judgement as to the need for treatment.

The above provisions will not be discussed in detail. It should be noted, however, that in order to fully understand these provisions, the entire act should be studied. Hopefully, we will be able to devote more discussion to these provisions in a future issue of ALERT.

AN ACT Reconstituting and More Effectively Coordinating the Maine Commission on Drug Abuse and the Division of Alcoholism and Providing an Alternative Sentencing for Violators of Drug Laws.

COMMENT: Although the provisions of this important legislation are too lengthy to be set out here, they should be read by all participants in the criminal justice system. The following is but a brief overview of the Act.

To accomplish its primary objective—namely to reduce significantly the incidence of drug abuse [including abuse of alcohol] in the state of Maine in the shortest possible time—this bill establishes the Office of Alcoholism and Drug Abuse Prevention. The Office will coordinate the planning and operation of all state drug abuse services, including those related to the abuse of alcohol and excepting those relating to drug traffic. It will also provide support and guidance to individuals, public and private organizations and local governments in their drug abuse prevention activities. The Act outlines the powers and duties of this office and also those of two other newly-created bodies: [1] the Maine Council on Alcohol and Drug Abuse Prevention and Treatment and [2] the State Government Drug Abuse Coordinating Committee.

In establishing a program for drug abuse prevention and treatment the bill sets standards for public and private alcohol-drug abuse treatment facilities. It provides for application by alcoholics for voluntary treatment. Similarly, intoxicated persons may come voluntarily to an approved treatment facility for emergency treatment. The bill provides for one who appears to be incapacitated by alcohol to be taken into protective custody by the police and brought to an approved treatment center for emergency treatment. Such taking into protective custody will not constitute an arrest, and no record will be made that the person has been arrested or charged with a crime. Under the Act alcoholics or incapacitated persons may also be involuntarily committed to treatment centers.

The municipalities, counties and the Office of Alcoholism and Drug Abuse Prevention may establish emergency service patrols which will consist of persons trained to give assistance in public places to persons who are intoxicated due to use of alcohol or dependent on drugs. Members of the patrols will render first-aid when needed and will transport intoxicated persons home and to and from public treatment facilities.

In cases where an individual is convicted of an offense involving violation of any statutes concerning controlled or illegal drugs or the sale or possession of drugs or narcotics, the court may impose sentence and place the person on probation. The court may then require as a condition of probation that such person shall participate in programs at an approved treatment facility.

Recent legislative enactments have repealed, replaced and amended several sections of Chapter 558, Title 22 of the Revised Statutes which deals with the sale and possession of Cannabis (Marijuana).

AN ACT relating to Criminal Penalties for the Possession, Manufacture and Cultivation of Cannabis, Mescaline and Peyote.

22 M.R.S.A. § 2383. Possession.

1. Manufacture or possess. Whoever manufactures, cultivates, grows or has under his control in connection with manufacturing, cultivating or growing Cannabis, Mescaline or Peyote or possesses 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.

Whoever possesses Cannabis, except as authorized by this chapter, shall be

punished by a fine of not more than \$1,000 and by imprisonment for not more than 11 months.

This bill, which repeals and replaces the former 22 M.R.S.A. § 2383[1], makes the possession of Cannabis [Marijuana] a misdemeanor no matter how many offenses a person has on his record.

AN ACT Relating to Criminal Penalties for Knowingly Being in the Presence of Cannabis.

22 M.R.S.A. § 2383 Possession

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

This bill eliminates all criminal penalties for knowingly being in the presence of Cannabis [Marijuana].

AN ACT Relating to Possession of Marijuana, Peyote or Mescaline

22 M.R.S.A. § 2384. Sale

Whoever sells, exchanges, delivers, barter, gives or furnishes or possesses with intent to sell, exchange, deliver, barter, give or furnish 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 not more than 10 years, for which the imposition or execution of such sentence shall not be suspended and probation not be granted.

The purpose of this bill, which repeals and replaces the old §2384, is to include possession with intent to sell, exchange, deliver, barter, give or furnish Cannabis, Mescaline or Peyote, to any person among the prohibited acts in this section.

AN ACT Relating to Forfeiture of All Property Used in Delivering Illegal Drugs

22 M.R.S.A. § 2387. Forfeiture of all property used in delivering illegal drugs

1. Property forfeited. The following property shall be subject to forfeiture to the State and all property rights therein shall be in the State:

A. All materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing or exporting any

[Continued on page 3]

substance in violation of sections 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C, or 2384;

B. All conveyances, including aircraft, watercraft, vehicles or vessels, which are used or are intended for use, to transport, conceal or otherwise to facilitate the manufacture, dispensing, or distribution of, or possession with intent to manufacture, dispense or distribute a substance in violation of sections 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C or 2384.

2. Jurisdiction. Property subject to forfeiture under subsection 1, paragraph A shall be declared forfeited by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter.

3. Exceptions. The court shall order forfeiture of all conveyances subject to subsection 1, paragraph B, except as follows:

A. No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of sections 2210, 2210-A, 2212-B, 2212-C, 2212-E, 2362, 2362-C or 2384;

B. No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of this State or of any state.

C. No conveyance shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used in and for the unlawful manufacturing, dispensing or distributing of any illegal substance covered by the sections referred to in paragraph B of subsection 1. Proof that said conveyance was used on 3 or more occasions for the purpose of unlawfully manufacturing, distributing or dispensing any controlled substance shall be prima facie evidence that said owner knew thereof or should have known thereof.

4. Petition; order. A county attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of a conveyance subject to forfeiture under subsection 1, paragraph B. Such petition shall be filed in the court having jurisdiction over the said conveyance. Such proceeding shall be deemed a civil suit, in which the State shall have the burden of

proving all material facts by a preponderance of the evidence and the owner of said conveyance or other person claiming thereunder shall have such burden as to all exceptions set forth in subsection 3. The court shall order the State to give notice by certified or registered mail or hand delivered by a deputy sheriff to the owner of the said conveyance and to such other person as appears to have an interest therein and shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. At such hearing, the court shall hear evidence and make findings of fact and enter conclusions of law, and shall thereupon issue a final order, from which the parties shall have such right of appeal. Such final order shall provide for disposition of the said conveyance by the State or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and to pay any bonafide mortgage thereon, and the balance, if any, shall be deposited in the treasury of the State, county or municipality making such seizure.

5. Records. Any officer, department or agency having custody of said property or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

6. Preliminary order. During the pendency of the proceedings, the court may issue at the request of the State ex parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of said property shall issue only upon a showing of probable cause and the application therefor and the issuance, execution and return thereof shall be subject to the provisions of applicable Maine Law.

This new section has been added to Title 22, Ch. 558, of the Revised Statutes to provide for forfeiture of property used in delivering illegal drugs. [22 M.R.S.A. § 2387].

AN ACT to Provide Penalties for sale of Counterfeit Substances which are not Drugs.

22 M.R.S.A. § 2387. Counterfeit substances

1. Definition. "Counterfeit substance" means a substance which is represented to be a particular controlled drug or substance under federal or state law, but which is in fact not that drug or substance.

2. Sale. Whoever sells, exchanges, delivers, barter, gives or furnishes a counterfeit substance 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.

This new section penalizes the sale or transfer of a substance which is represented to be a controlled drug or substance but which is a counterfeit. Due to an error, the last two sections have been given the same number-2387. The error will be corrected at some time in the future probably by assigning number 2388 to the section on counterfeit substances.

AN ACT to Provide Elected District Attorneys

COMMENT: The purpose of this bill is to replace the present part-time county attorney system with full-time prosecutors. Since this bill is too long to be quoted in this issue of ALERT, we will only discuss the main provisions of the bill that differ from the present local prosecution system. The bill provides, effective January 1, 1974, for a statewide system of adequately compensated, full-time, elected district attorneys, each to serve for four-year terms. Each district attorney will represent a prosecutorial district, some of which districts have been formed by combining one or more adjacent counties. Each district attorney is given the power to appoint assistants, at least one of whom must be full-time. All full-time district attorneys and full-time assistants are designated as full-time officers of the state, and, as such, they are severely restricted from the private practice of law.

[Continued on page 4]

AN ACT Regulating the Interception of Wire and Oral Communications.

CHAPTER 102

INTERCEPTION OF WIRE AND ORAL COMMUNICATIONS

§ 709. Definitions

15 M.R.S.A. § 709. Definitions

The following words and phrases as used in this chapter, unless the context otherwise indicates, shall have the following meanings.

1. Communication common carrier. "Communication common carrier" means any telephone or telegraph company.

2. Contents. "Contents," when used with respect to any wire or oral communication, means any information concerning the identity of the parties to such communication or the existence, contents, substance, purport or meaning of that communication.

3. Intercepting device. "Intercepting device" means any device or apparatus which can be used to intercept a wire or oral communication other than:

A. Any telephone or telegraph instrument, equipment or facility or any component thereof being used by a communication common carrier in the ordinary course of its business or extension telephones used by a subscriber to telephone service; or

B. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

4. Interception. "Interception" means to hear, record or aid another to hear or record the contents of any wire or oral communication through the use of any intercepting device by any person other than:

A. The sender or receiver of such communication;

B. A person within the range of normal unaided hearing or subnormal hearing corrected to not better than normal; or

C. A person given prior authority by such sender;

5. Oral communications. "Oral communications" means any oral communications uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.

6. Person. "Person" means any individual, partnership, association, joint stock company, trust or corporation, or any other legal entity, whether or not any of the foregoing is an officer, agent or employee of the United States, a state or a political subdivision of a state.

7. Wire communication. "Wire communication" means any communication made in whole or in part through the use of facilities for transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception.

15 M.R.S.A. § 710. Offenses

1. Interception, oral communications prohibited. Any person, other than an employee of a common carrier as defined in this chapter or a law enforcement officer carrying out practices otherwise permitted by this chapter, who willfully intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept, any wire or oral communication shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than 5 years, or by both.

2. Editing of tape recordings in judicial proceedings prohibited. Any person who willfully edits, alters or tampers with any tape, transcription or other sound recording, or knows of such editing, altering or tampering, and presents such recording in any judicial proceeding or proceeding under oath, without fully indicating the nature of the changes made and the original state of the recording, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than 5 years, or by both.

3. Disclosure, or use of wire or oral communications prohibited. Any person who:

A. Willfully discloses or attempts to disclose to any person the contents of any wire or oral communication, knowing that the information was obtained through interception; or

B. Willfully uses or attempts to use the contents of any wire or oral communication, knowing that the information was obtained through interception, shall be punished by imprisonment for not more than 2 years or by a fine of not more than \$5,000, or by both.

4. Duty to report. Any communications common carrier shall promptly report to the Attorney General any facts coming to its attention in the conduct of its business which may indicate a possible violation of this section and such carrier shall adopt reasonable rules to assure compliance with this subsection, provided such carrier shall not be liable to any person who may claim an injury arising out of any such report, if made in good faith. Any violation of this subsection shall be punishable by a fine of not more than \$5,000.

5. Possession of interception devices prohibited. A person, other than an employee of a common carrier as defined in this chapter or a law enforcement officer carrying out practices otherwise permitted by this chapter, who has in his possession

any device, contrivance, machine or apparatus designed or commonly used for intercepting wire or oral communications defined in this chapter, shall be punished by imprisonment for not more than 2 years or by a fine of not more than \$5,000, or by both.

6. Sale of interception devices prohibited. A person who sells, exchanges, delivers, barter, gives or furnishes or possesses with an intent to sell any device, contrivance, machine or apparatus designed or commonly used for the interception of wire or oral communications as defined in this chapter, shall be punished by imprisonment for not more than 10 years and by a fine of not more than \$10,000 for each offense.

A. Exception. Devices manufactured under written contract for sale to common carriers and law enforcement agencies, provided that the production of any such device shall not have commenced prior to the signing of said contract by both parties.

15 M.R.S.A. § 711. Civil remedy

Any party to a conversation intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses or uses such communications and shall be entitled to recover from any such persons:

1. Damages. Actual damages, but not less than liquidated damages, computed at the rate of \$100 per day for each day of violation;

2. Attorney's fee. A reasonable attorney's fee and other litigation disbursements reasonably incurred.

15 M.R.S.A. § 712. Exceptions

It shall not be a violation of this chapter for an operator of a switchboard, or an officer, employee or agent of any communication common carrier, as defined in this chapter, to intercept, disclose or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication, provided that said communication common carriers shall not utilize service observing or random monitoring, except for mechanical or service quality control checks, nor shall any such officer, employee or agent use or disclose to another the contents as defined in this chapter of the communication so intercepted.

It shall not be a violation of this chapter for a person acting under cover of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception, except that any evidence so obtained shall not be admissible in a court of law.

[Continued on page 5]

COMMENT: This new chapter strictly regulates the interception of oral and wire communications and creates civil and criminal penalties when such communications are unlawfully intercepted, used, or disclosed. The act also prohibits the editing of tape recordings used in judicial proceedings.

AN ACT Raising the Maximum Age of a Juvenile Offender

15 M.R.S.A. § 2502. Definitions.

4. Juvenile Offender. "Juvenile offender" means any child under 18 years of age who has been found by an appropriate juvenile court to have committed any of the acts or offenses specified in chapters 401 to 409.

COMMENT: The purpose of this bill is to raise the maximum age of a juvenile offender from 17 to 18.

AN ACT Relating to Commitment of Juvenile Offenders

15 M.R.S.A. § 2611.

5. Dispositions after return to a juvenile court. In all cases in which a juvenile is returned to a juvenile court from the Boys Training Center or Stevens School, the juvenile court may make any of the dispositions otherwise provided in this section. When following commitment under this section to the Boys Training Center or Stevens School, the superintendent thereof considers the child to be incapable of benefiting from the program at the center and is in need of, and can reasonably be expected to benefit from, facilities and program available at the Men's Correctional Center, if the child is a male, or the Women's Correctional Center, if the child is a female, the superintendent may request a judicial review of disposition. Such request shall be filed with the juvenile court having territorial jurisdiction where the juvenile institution is located, and the juvenile court may order the child's record to be forwarded from the juvenile court having original jurisdiction of the case. A date and time shall be set for, and reasonable notice given of, a hearing at which the child shall have the right to counsel for the review of disposition of the case. The court at the hearing shall receive testimony bearing on the issue of the need for redispotion of the case and may receive any other relevant testimony. If the court finds from the testimony presented and from pertinent reports submitted, if any, that the child is incapable of benefiting from the program at the training center and is in need of, and can reasonably be expected to benefit from, facilities and program available at the

Men's Correctional Center, if the child is a male, or the Women's Correctional Center, if the child is a female, the court may order commitment to such institution. Such redispotion of the case of any such juvenile shall not result in a period of confinement at the correctional center longer than the period of confinement applicable, had the juvenile been committed thereto originally.

The juvenile court shall not commit a juvenile to the Men's Correctional Center, the Women's Correctional Center, the Boys Training Center or the Stevens School if the offense or act committed by the juvenile would not be an offense under the criminal statutes of this State, if committed by a person 18 years of age or over.

COMMENT: The purpose of this bill is to prohibit the juvenile court from committing a juvenile to one of the listed institutions if the juvenile's actions, if committed by an adult, would not constitute a criminal offense.

It is worthy of note that the legislature specifically declared its intent that this new provision should operate prospectively only. The statement of intent is as follows:

Intent. It is the intent of the Legislature that this provision operate prospectively only and it shall not apply in the situation where a juvenile is now committed to the Men's Correctional Center, the Women's Correctional Center, the Boys' Training Center or the Stevens School although it shall apply to matters pending, but undisposed of at the time of the effective date of this legislation.

AN ACT to Prohibit Outdoor Motion Picture Theatres from Exhibiting Motion Pictures Portraying Certain Sexual Conduct in such a Manner that the Exhibition is Visible from Public Ways or Places of Public Accommodation.

8 M.R.S.A. § 665. Exhibitions visible by minors

Whoever, as owner or manager of an outdoor motion picture theatre, exhibits, with knowledge of its character and content, and in such a manner that the exhibition is visible by minors from or in any public street, highway, sidewalk, thoroughfare, private residence or place of public accommodation, a motion picture which, in whole or in part, depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse and which is harmful to minors, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

AN ACT Relating to Resetting, Tampering or Disconnecting Odometers on Motor Vehicles.

17 M.R.S.A. § 1609-A Resetting, tampering or disconnecting odometers on motor vehicles

1. Information on transfer. At the time of transfer of a motor vehicle each transferor shall furnish to the transferee a written statement signed by the transferor, containing the following information:

- A. The date of the transfer;
- B. The odometer reading at the time of transfer;
- C. The transferor's current address;
- D. A statement that the transferor or his agent has repaired, replaced or serviced the odometer, if such is the fact; and
- E. The name and address of the prior owner;
- F. The identity of the vehicle, including its make, model and body type, its vehicle identification number and its last plate number;

and also shall enter in ink on the document transferring ownership to the transferee the same said information listed in paragraphs A to D and furthermore each transferor of a motor vehicle shall enter in ink on the instruments executed by him, including any form prescribed by the Department of Secretary of State, Division of Motor Vehicles, the odometer reading at the time of transfer. In addition to the items listed in this section, if the transferor knows that the odometer reading differs from the number of miles the vehicle has actually traveled, he shall include a statement that the actual vehicle mileage is unknown and if the transferor knows that the mileage indicated on the odometer is beyond the designed mechanical limits of said odometer, he shall include a statement of the total cumulative mileage. Any person, firm, partnership or corporation who intentionally violates any provision of this subsection or who gives a false statement to a transferee under this subsection, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

2. Misrepresentation. A person, firm, partnership or corporation who shall misrepresent the mileage of a motor vehicle to a transferee by the execution and delivery of the written statement required in subsection 1, which in fact is false, or who shall misrepresent such mileage to a transferee by disconnecting, changing, tampering or causing to be disconnected or changed the odometer of any motor vehicle shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

3. Service and repair. Nothing in this section shall prevent the service, repair or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair or replacement.

[Continued on page 6]

Where the odometer is incapable of registering the same mileage as before such service, repair or replacement, the odometer shall be adjusted to read zero and a notice in writing shall be attached to the left door frame of the vehicle by the owner or his agent specifying the mileage prior to repair or replacement of the odometer and the date on which it was repaired or replaced. Any removal or alteration of such notice so affixed shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

4. Penalty. A violation of any provision of this section shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.

COMMENT: The purpose of this bill is to make the law of Maine dealing with the resetting, tampering, or disconnecting of odometers on motor vehicles consistent with the federal law.

AN ACT Providing for Inclusion of Odometer Reading on Certificate of Registration of Motor Vehicles Returned Upon Transfer of Ownership.

29 M.R.S.A. § 151. Certificate not transferable; notice of transfer

Upon the transfer of ownership of any vehicle, its registration shall expire and the person in whose name such vehicle is registered shall forthwith return the certificate of registration to the Secretary of State with a written notice containing the date of the transfer of ownership and the name, place of residence and address of the vendee and a description of the vehicle, including its motor, serial, or vehicle identification number.

In addition to the items listed in this section, the transferor of a motor vehicle shall include on said notice the odometer reading at the time of transfer and shall otherwise comply with Title 17, section 1609-A. Upon surrender of the registration form to the Motor Vehicle Division of the Secretary of State, the Secretary of State shall not issue a new registration unless the information required by Title 17, section 1609-A has been completed on the surrendered registration form.

COMMENT: The purpose of this bill is to require the transferor of a motor vehicle to record the odometer reading at the time of transfer on the written notice required to be returned to the Secretary of State. This would assist law enforcement officials in determining who owned a motor vehicle at the time the odometer may have been reset or disconnected.

AN ACT Relating to Suspensions under the Motor Vehicle Laws.

29 M.R.S.A. § 2241-E. Suspension

Suspension authorized under this Title

shall be effective upon delivery of suspension notification to said person and the period of suspension shall be computed from the actual delivery date of said suspension.

COMMENT: In the FORUM column of the February 1973 ALERT, we dealt with the question of when the time period for the suspension of a person's driver's license begins to run against him. We said there that the time period begins to run against the person as soon as the order of suspension is issued by the Secretary of State. The new legislation changes this and now the time period of the suspension begins to run from the date of delivery of the suspension notice. The purpose of this legislation is to eliminate the practice of suspended persons evading the delivery of notice of the suspension order until the suspension period has run.

AN ACT to Authorize Issuance of Warrants for Administrative Searches

4 M.R.S.A. § 179. Administrative Search Warrants

A District Court Judge may issue warrants to conduct administrative searches in such manner, for such purposes and under such circumstances as the Supreme Judicial Court shall by rule provide.

COMMENT: The purpose of this new section is to permit the Maine Supreme Judicial Court to provide for a rule for the issuance of administrative search warrants by District Court Judges. The United States Supreme Court has held that administrative searches of private premises may not be conducted except with the owner or occupant's consent or with a valid warrant. See Camara v. Municipal Court, 377 U.S. 420 [1964]; See v. Seattle, 387 U.S. 109 [1967]. There has previously been no established procedure in the state of Maine for issuing such warrants. The absence of such procedure hinders the enforcement of health and safety regulations adopted by municipalities and by the state.

AN ACT Relating to Election of Jury Trials in Misdemeanor Proceedings.

15 M.R.S.A. § 2114. Defendant must make election respecting jury trial.

In all prosecutions before the District Court, the defendant may in open court waive in writing his right to a jury trial in the Superior Court and elect to be tried in the District Court at a hearing before the Judge of the District Court on a plea of not guilty or enter a plea of guilty or nolo contendere. If the Judge of the District Court is satisfied that the defendant's waiver of his right to jury trial is made freely and understandingly, he may then proceed to dispose of the case. The Judge of the District Court may refuse to accept the defendant's waiver of

his right to jury trial or the defendant may refuse to waive the same or decline to make an election, in which event the Judge of the District Court shall forthwith transfer the case to the Superior Court for arraignment and disposition. Any appeal to the Superior Court following an accepted waiver and judgment of conviction in the District Court shall be on questions of law and on the sentence only. Nothing in this section shall prevent a defendant, after the transfer of the case to the Superior Court, from waiving his right to jury trial in the Superior Court, in which event the case shall be heard by a Justice of the Superior Court without jury.

COMMENT: The purpose of this bill is to limit the defendant's right to a trial de-novo in the Superior Court in misdemeanor cases after an adverse decision in the District Court. [This procedure was described briefly in the February 1972 ALERT on page 4] The trial de novo procedure involved a new trial from the beginning and, because of duplication of evidentiary hearings, it was expensive, inefficient, and not reasonably related to any interest of the defendant or the State. The new procedure solves this problem by allowing the defendant to waive his right to jury trial in Superior Court and be tried before the Judge of the District Court. If the Judge of the District Court refuses to accept the waiver, or the defendant either refuses to waive or to make any election, the District Court Judge must transfer the case to Superior Court for disposition.

AN ACT Creating the Maine Motor Vehicle Certificate of Title and Anti-Theft Act

COMMENT: This bill is too long to be quoted in its entirety in this issue of ALERT. Its main purpose is to control theft and unlawful conversion of motor vehicles. The method of achieving this goal is to require owners of motor vehicles, with certain exceptions, to obtain a certificate of title to their vehicles from the Secretary of State of Maine.

Professional thieves realize that it is considerably more difficult to dispose of a titled vehicle than one that is not. Although a certificate of title cannot protect the owner completely, it has been proven that the chance of recovery of a titled vehicle is far better than that of an untitled vehicle.

There is one subchapter of this new act which relates directly to law enforcement officers, and it will be quoted in full here.

**SUBCHAPTER IV
ANTI-THEFT PROVISIONS AND
PENALTIES**

29 M.R.S.A. § 2441. Application of chapter
This chapter does not apply to a self-propelled wheelchair.

[Continued on page 7]

29 M.R.S.A. § 2442. Altering, forging or counterfeiting certificates

1. Penalty. A person who, with fraudulent intent:

A. Alters, forges or counterfeits a certificate of title;

B. Alters or forges an assignment of a certificate of title, or an assignment or release of a security interest, on a certificate of title or a form the Secretary of State prescribes;

C. Has possession of or uses a certificate of title knowing it to have been altered, forged or counterfeited; or

D. Uses a false or fictitious name or address, or makes a material false statement, or fails to disclose a security interest, or conceals any other material fact, in an application for a certificate of title,

shall be punished by a fine of not less than \$500, nor more than \$1,000, or by imprisonment for not less than one year nor more than 5 years, or by both.

29 M.R.S.A. § 2443. Other offenses

1. Penalty. A person who:

A. With fraudulent intent, permits another, not entitled thereto, to use or have possession of a certificate of title;

B. Willfully fails to mail or deliver a certificate of title or application thereof to the Secretary of State within 10 days after the time required by this chapter;

C. Willfully fails to deliver to his transferee a certificate of title within 10 days after the time required by this chapter; or

D. Willfully violates any provision of this chapter, except as provided in section 2442;

shall be punished by a fine of not more than \$500, or by imprisonment of not more than 6 months, or by both.

29 M.R.S.A. § 2444. Report of theft, recovery of unclaimed vehicle

1. Enforcement officers. Any officers charged with enforcement who learn of the theft of a vehicle not since recovered or of the recovery of a vehicle whose theft or conversion he knows or has reason to believe had been reported to the Secretary of State shall forthwith report the theft or recovery to the Secretary of State.

2. Owner or lienholder. In addition to the reports required by section 892 an owner or a lienholder may report the theft of a vehicle, or its conversion if a crime, to the Secretary of State, but the Secretary of State may disregard the report of a conversion unless a warrant has been issued for the arrest of a person charged with the conversion. A person who has so reported

the theft or conversion of a vehicle shall, forthwith after learning of its recovery, report the recovery to the Secretary of State.

3. Operator of garage. An operator of a place of business for garaging, repairing, parking or storing vehicles for the public, in which a vehicle remains unclaimed for a period of 30 days, shall, within 5 days after the expiration of that period, report the vehicle as unclaimed to the Secretary of State. A vehicle left by its owner whose name and address are known to the operator or his employees is not considered unclaimed. A person who fails to report the vehicle as unclaimed in accordance with this subsection forfeits all claims and liens for its garaging, parking or storing and shall be punished by a fine of not more than \$25 for each day his failure to report continues.

4. Suspension. The Secretary of State may suspend the registration of a vehicle whose theft or conversion is reported to him pursuant to this section; until the Secretary of State learns of its recovery or that the report of its theft or conversion was erroneous, he shall not issue a certificate of title for the vehicle.

29 M.R.S.A. 2445. False report

A person who knowingly makes a false report of the theft or conversion of a vehicle to an enforcement officer or to the Secretary of State shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both.

29 M.R.S.A. § 2446. Impeachment of defendant

In a prosecution for a crime specified in this subchapter, a certified copy of a conviction under section 2442 is admissible to impeach the credibility of the defendant.

29 M.R.S.A. § 2447. Construction with other laws

The penal provisions of this subchapter in no way repeal or modify any existing provision of criminal law but are additional and supplementary thereto.

It should be noted that law enforcement officers will not have occasion to enforce these provisions of the law until about a year from now. The new 1975 vehicles will be the first vehicles required to have certificates of title by the Secretary of State.

AN ACT to Prohibit Contraband in County Jails

34 M.R.S.A. § 755. Contraband articles brought within prison and county jails

Any person who brings or attempts to bring into the prison or any county jail any article of contraband shall be conclusively presumed to have intended to deliver such article to a prisoner, and shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 2 years.

“Contraband” for the purpose of this section is defined as any article not allowed by the Warden of the State Prison, the sheriff or jailer of our several county jails, for general usage by any or all prisoners within the prison.

Any person knowingly providing to, leaving for or making available to any prisoner on assignment or program outside the prison or jail, contraband as defined in this section, upon conviction thereof, shall be subject to the penalty prescribed in this section.

COMMENT: The purpose of this bill is to extend the prohibition against contraband articles to county jails. All penal institutions—including county jails—are presently faced with the problem of the smuggling of drugs and other substances and materials to prisoners.

AN ACT Authorizing the Maine Criminal Justice Academy Trustees to Establish Certification Standards for Law Enforcement Officers.

25 M.R.S.A. § 2803. Duties

The board of trustees of the academy shall have the following duties: Certify and set standards for certification of the graduates of the academy; promulgate the standards for recruitment of academy students and prescribe the content of the curriculum. The board of trustees of the academy may certify and set standards for certification of sheriffs, Maine police chiefs and local law enforcement officers. The academy shall be under the administrative control and supervision of the Department of Public Safety.

The Commissioner of Public Safety shall supervise the training programs of the academy, employ, subject to the Personnel Law, all personnel which may be reasonably required to carry out the purposes of the academy, lease, rent or acquire adequate facilities at a location determined by the board of trustees to conduct the academy's training programs, accept such federal funds or grants as may be available to carry out or implement its purposes. The board of trustees shall establish reasonable fees for attendance to defray part of the costs of operating the academy.

COMMENT: The purpose of this bill is to provide for development of certification standards for law enforcement officers by the trustees of the Maine Criminal Justice Academy.

25 M.R.S.A. § 2805. Qualifications

1. **Basic Training.** All local full-time law enforcement officers shall be required to successfully complete, during the first year of their employment, a basic training course at the Maine Criminal Justice Academy.

[Continued on page 8]

This section shall not apply to any person employed as a full-time local law enforcement officer on September 23, 1971.

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. "Local law enforcement officers" shall mean all persons empowered by a municipality or county 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 full-time local law enforcement officer by any municipality or county, said person shall be enrolled in an in-service training program conducted by the police agency by which he is employed, the Maine Criminal Justice Academy or a program approved by the board of trustees.

COMMENT: This legislation eliminates the minimum 6-week time limit on the basic training course required of first year law enforcement officers.

AN ACT Relating to Appointment of Municipal Law Enforcement Officers.

SUBCHAPTER III-A

LAW ENFORCEMENT OFFICERS

30 M.R.S.A. § 2361. Police Officers

1. Appointment. Except as provided in municipal charter or section 2317, subsection 1, paragraph F, the municipal officers may appoint for a definite term, control and fix the compensation of police officers, unless the municipality has provided otherwise under section 2152, subsection 2. Police officers may be removed for cause after notice and hearing.

2. Powers. Police officers shall be empowered to serve criminal processes and to arrest and prosecute offenders of the law. 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 court, or for the purpose of pursuing a person who has gone into another municipality and for whose arrest a police officer has a warrant, no police officer shall have any authority in criminal matters beyond the limits of the municipality in which he is appointed. A police officer has all the statutory powers of a constable, except as limited by municipal ordinance.

30 M.R.S.A. § 2362 Special police officers

Special police officers of limited jurisdiction may be appointed for a term of not more than one year and as provided in section 2361, subsection 1 and shall have all powers of a police officer, except as specifically provided by municipal ordinance or the the certificate of appointment.

30 M.R.S.A. § 2363. Constables

Constables shall be appointed in the same manner and with the same effect as special police officers. Persons injured by the neglect or misdoings of a constable have the same remedy by preliminary action, and action of his bond, as in case of a sheriff's bond. For services which may be performed either by a deputy sheriff or a constable, the constable is allowed the same fees as a deputy sheriff, unless otherwise provided.

30 M.R.S.A. § 2364. Arrest in other municipalities

Every municipal law enforcement 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: The purpose of this new subchapter is to redefine the appointment and powers of municipal law enforcement officers. The bill also provides for the appointment of special police officers of limited jurisdiction and constables. The former law relating to appointment and powers of municipal law enforcement officers [30 M.R.S.A. §§ 2401-2404] is repealed. Section 2364, titled "Arrest in other municipalities," concerns fresh pursuit by municipal law enforcement officers and is exactly the same as the old fresh pursuit law [30 M.R.S.A. § 2402-A] which is repealed by this act. Fresh pursuit by municipal law enforcement officers is discussed at p. 3 of the August 1971 Alert and at p. 3 of the October 1971 Alert.

AN ACT Relating to Jurisdiction of County Enforcement Officers in Fresh Pursuit.

30 M.R.S.A. § 1004. Arrest in other counties

Every sheriff or deputy sheriff in fresh pursuit of a person who travels beyond the limits of the county in which the officer is appointed shall have the same power to arrest such person as the officer has within the said county. 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: Deputy sheriffs already have the common law authority to pursue fleeing felons outside the boundaries of their counties. However, in cases of misdemeanors, the law, up to the present, has made no provision for fresh pursuit beyond the county limits. This new section codifies the deputy sheriff's common law authority to pursue fleeing felons and authorizes fresh pursuit in cases of misdemeanors.

See p. 3 of the August 1971 ALERT for a general discussion of fresh pursuit. See also p. 3 of the October 1971 ALERT for a discussion of legislation authorizing municipal law enforcement officers to pursue fleeing offenders across municipal boundaries.

AN ACT Revising the Laws Governing Admission to Mental Health Facilities.

COMMENT: This new enactment, which is too lengthy to be set out here, makes numerous changes regarding admission to Maine's mental health facilities.

The Act limits to 60 days the length of time a court may commit a person accused of crime to the custody of the Commissioner of Mental Health and Corrections for the purpose of determining whether the person has a mental disease or mental defect which would affect his criminal responsibility or his competency to stand trial. The Act thus replaces the constitutionally invalid provision of 15 M.R.S.A. § 101 which had allowed the court to commit the defendant for an indefinite period of time. The U.S. Supreme Court held the former procedure to be invalid in Jackson v. Indiana, 92 S.Ct. 1845 [1972][see Alert, August 1972, p. 6].

The Act also limits the length of time a person who has been accused of a crime and who has been found by the court to be incompetent to stand trial may be held in custody [or, if released on bail, be compelled to undergo outpatient observation and treatment]. The former procedure, which allowed indefinite commitment of one found incompetent to stand trial, was held by the United States Supreme Court in Jackson v. Indiana, supra, to be violative of the accused's due process rights.

In addition to these changes regarding commitment of persons charged with offenses, the Act also makes sweeping changes in Chapter 191 of Title 34 which provides for hospitalization of the mentally ill. Provision is made for three types of admissions to mental health facilities: informal voluntary admission, emergency

[Continued on page 9]

involuntary admission and non-emergency involuntary admission. Voluntary admissions are promoted by the new law, which allows the patient freedom to leave at any time after admission and which eliminates the completion of forms and the necessity of a physician's certificate as prerequisites to voluntary admission. Furthermore, the Act assures that a mentally ill person can be hospitalized involuntarily only if he is found by a court to be dangerous to himself or others. With respect to cases of involuntary admission, the Act outlines at length the right to a hearing, the right to counsel and the other constitutional rights to which the individual is entitled.

AN ACT Relating to Credit for Confinement within County Jail Prior to Sentencing.

15 M.R.S.A. § 1701-A. Credit for confinement prior to sentencing

Any person who is sentenced to the Maine State Prison, Men's Correctional Center, Women's Correctional Center, or to any county jail and is in execution thereof, shall be granted credit against the maximum term and minimum term, if applicable, of his sentence during which such person was confined in jail awaiting and during trial prior to the imposition of sentence, pending appeal, and not under any sentence of confinement. The clerk of the court sentencing any such person shall record in the judgement and order of commitment the number of days of such confinement and the credit provided for in this section shall be calculated on the basis of such information.

If any such person shall be committed to jail or other place of detention to await transportation to the place at which his sentence is to be served, his sentence shall commence to run from the date on which he is received at such jail or other place of detention.

COMMENT: The purpose of this legislation is to allow a person to be credited with the period of time he spends awaiting trial within a county jail. This would provide more equitable treatment of persons who are unable to furnish bail and have no alternative but to stay in a county jail while awaiting trial.

AN ACT Relating to Penalty for Sale of Liquor in Violation of Law.

28 M.R.S.A. § 1051. Illegal deposit or possession with intent to sell

No person shall deposit or have in his possession any liquor with intent to sell the same in this State in violation of law, or with intent that the same shall be so sold by any person, or to aid or assist any person in such sale. Whoever violates any of the provisions of this section shall be punished by a fine of not less than \$100 nor more than \$500, and costs, and in addition thereto by imprisonment for not less than 2 months nor more than 6 months.

COMMENT: The purpose of this bill is to remove from section 1051 the unconstitutional penalty clause which had provided for an additional six months imprisonment for those offenders in default of payment of fines and costs. The United States Supreme Court, in Tate v. Short, 91 S.Ct. 643 [1971], has held such provisions violative of the equal protection clause. See the April 1971 ALERT, page 5.

AN ACT Relating to Seizing Firearms Equipped with a Silencer

12 M.R.S.A. § 2458. Silencers; automatics; capacity

No person shall sell, offer for sale, use or have in his possession any gun, pistol or other firearms, fitted or contrived with any device for deadening the sound of explosion. Whoever violates any provision of this section shall forfeit such firearm or firearms and the device or silencer, and shall further be subject to the penalties of section 3060. Any sheriff, deputy sheriff, constable, warden or police officer may seize any firearm and any device or silencer found in possession of any person in violation of this section, and on conviction of the party from whom such firearm is seized, such firearm shall be sold and the proceeds paid to the Treasurer of State, and the device or silencer shall be destroyed. This section does not apply to military organizations authorized by law to bear arms, or to the National Guard in the performance of its duty....

COMMENT: The purpose of this bill is to include a police officer among those who may seize a firearm equipped with a silencer.

AN ACT Relating to Licenses to Carry Weapons

25 M.R.S.A. § 2031. Threatening display of or carrying concealed weapons; licenses.

No person shall in a threatening manner display, or shall wear under his clothes, or conceal about his person any firearm, slung shot, knuckles, bowie knife, dirk, stiletto or other dangerous or deadly weapon; except that the chief of police or city marshal of any city or the selectmen of any town may upon written application therefor issue to any legal resident of such city or town of good moral character, a certificate setting forth that such person has been duly licensed to carry such weapon mentioned in the certificate. If such applicant is a resident of the State and is domiciled in unorganized territory, such certificate may be issued by the police or city marshal of any city or the selectmen of any town nearest to the unorganized territory. The Chief of the Maine State Police or persons authorized by him may, upon written application therefor, issue to a nonresident, not falling within the local licensing authority, who is in the employ of a public utility corporation, or a person, firm

or corporation engaged in the business of transferring money or in a business of a similar nature and who is of good moral character and whose application is endorsed by his employer, a certificate setting forth that such person has been duly licensed to carry any weapon or weapons mentioned in this section during the working hours he shall be employed as aforesaid. The foregoing certificate shall cease to be valid when the employee leaves the employment of the employer who endorsed the application and shall be subject to termination as hereafter provided. All licenses shall continue in effect to the end of the calendar year in which issued and for one year thereafter unless sooner revoked by the Chief of the Maine State Police, chief of police, city marshal or by the selectmen of the town in which said license was issued. The official or officials, issuing a license, shall make a permanent record of it in a suitable book or file, kept for that purpose. Such record shall include date of issuance, the name, age, sex and street address of licensee, together with complete description of weapon, and in case of firearms, the caliber, make and number, **and a description of the licensee, and said descriptions shall be placed on said certificate.** This section shall not be construed as prohibiting the carrying or wearing of such weapons by United States marshals, sheriffs and their deputies, constables, police officers, licensed private detectives and other officers charged with the enforcement of law. All licenses issued in accordance with this section shall authorize the person so licensed to carry such weapons throughout the State. Whoever violates any of the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days.

Any certificate issued pursuant to this section shall be valid throughout the State of Maine.

COMMENT: The purpose of this bill is to facilitate the regulation and control of dangerous weapons.

AN ACT Relating to Dealers in Used Personal Property

15 M.R.S.A. § 456. Record of sales of used merchandise

No dealer in used personal property shall buy any used personal property from any person without first recording in a book kept for the purpose a description of said personal property and the name and address of the seller of such property. The dealer shall also record the registration number of the motor vehicle used by the seller in the delivery of such used merchandise and shall require reasonable proof of identification of the seller. Said record shall be made before said sale is completed and shall be open to

[Continued on page 10]

the inspection of any law enforcement officer or prosecuting attorney. Any dealer who fails to keep such record or fails to require reasonable proof of identification of the seller or refuses to show the same to any law enforcement officer or prosecuting attorney shall be punished by a fine of not more than \$500. Whoever gives a false or fictitious name to said dealer shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months.

COMMENT: This legislation, like the former § 456 which it repeals and replaces, develops a record of ownership, open to the inspection of law enforcement officers and prosecuting attorneys, to facilitate pursuit of individuals involved in crimes of stolen property. The new bill applies to sales of all used personal property and increases the punishment for violations of the act.

AN ACT Relating to Cruelty to Animals

17 M.R.S.A. § 1051. Definitions

In this chapter and in every law relating to or affecting animals, the masculine includes the feminine, the singular includes the plural, the word "animal" includes every living sentient creature, the words "torture," "torture" and "cruelty" include every act, omission or neglect, whether by owner or other person whereby unjustifiable physical pain, suffering or death is caused or permitted and the words "owner," or "person" include corporations as well as individuals.

17 M.R.S.A. § 1091. Acts of cruelty

Any owner or other person, who overdrives, overloads or overworks, who torments, tortures, maims, wounds or deprives of necessary sustenance, or who cruelly beats, mutilates or kills any horse or other animal or causes the same to be done, or any owner or other person having charge or custody thereof who fails to provide such animal with proper food, drink, shelter and protection from the weather and humanely clean conditions; every person, owning, or having the charge or custody of any animal, who knowingly abandons or authorizes or permits the same to suffer tortures or cruelty; and every owner, driver, possessor or person having the custody of an old, maimed, disabled or diseased animal, who works the same when unfit for labor or who abandons such animal; and every person who carries or causes to be carried, or has the care of any animal in, upon, or attached to a car or any other vehicle or means of locomotion, in a cruel or inhumane manner, or in a way or manner which endangers the animal, shall for every such offense be punished by a fine of not more than \$500, or by imprisonment for not more than 11 months, or by both.

17 M.R.S.A. § 1092. Malicious killing or injury to domestic animals; stealing

Whoever maliciously kills, wounds, maims, disfigures or poisons any domestic animal, dog or cat or exposes any poisonous substance with intent that the life of such animal, dog or cat shall be destroyed thereby, or steals or entices away or confines or harbors such animal for the purpose of obtaining a reward or for any other illegal purpose shall, when the offense is not of a high and aggravated nature, be punished by a fine of not more than \$300 or by imprisonment for not more than 3 months, or by both, and when the offense is of a high and aggravated nature by a fine of not more than \$1,000 or by imprisonment for not more than 4 years.

COMMENT: The purpose of this bill is to more clearly define certain provisions of the cruelty to animals statutes so all sentient creatures are covered by the law and to add further protection to animals. [A sentient creature is one which is capable of sense perception and at least rudimentary consciousness.]

AN ACT Relating to the Control of Dogs

7 M.R.S.A. § 3454. License necessary

No dog shall be kept within the limits of this State unless such dog shall have been licensed by its owner in accordance with the laws of Maine.

"Owner" means any person or persons, firm, association or corporation owning, keeping or harboring a dog.

7 M.R.S.A. § 3455. Dogs not to run at large

It shall be unlawful for the owner of any dog, licensed or unlicensed, to permit such dog to run at large, except when used for hunting.

"At large" means off the premises of the owner and not under the control of any person by means of personal presence and attention as will reasonably control the conduct of such dog.

7 M.R.S.A. § 3456. — disposal

Any police officer, sheriff, deputy sheriff, game warden or constable shall seize, impound or restrain any dog in violation of section 3455 and deliver such dog to any person or shelter authorized to board dogs by the Department of Agriculture under section 3406. Such dogs shall be handled as strays and abandoned dogs.

7 M.R.S.A. § 3457. Penalties

Instead of seizing and impounding the dog, the officer, having jurisdiction may prosecute the owner of any dog running at large, and any person upon conviction shall be punished by a fine of not less than \$25 nor more than \$100.

Also, 7 M.R.S.A. 3601, making it unlawful for any dog to roam at large in any area frequented by deer from December 1st to June 30th, has been repealed.

COMMENT: The purpose of these new sections is to control and regulate dogs within the state.

AN ACT Giving Powers of Arrest to State House Security Officer.

5 M.R.S.A. § 1773. Special Officers; powers and duties; cooperation

The Director of Public Improvements is authorized and empowered to appoint and employ, subject to the Personnel Law, security officers who shall have the powers of arrest of a sheriff in the Capitol Area, parks, grounds, buildings and appurtenances owned or leased by the State at the seat of government.

The powers and duties of the special police officers so appointed and employed shall be to patrol all of the public ways and parking areas subject to this subchapter, enforce rules and regulations made under section 1772, arrest any violator thereof and prosecute any offender against the same.

The State Police, sheriffs and deputy sheriffs, constables and police officers of the City of Augusta shall, so far as possible, cooperate with the special police officers appointed and employed under this section in the enforcement of rules and regulations made pursuant to section 1772.

COMMENT: The purpose of this bill is to give State House security officers the powers of arrest of a sheriff upon state grounds at the seat of government in Augusta.

OTHER BILLS OF INTEREST

Because of space limitations, we have been unable to present or discuss all the recent legislation of interest to criminal justice personnel in this issue of ALERT. We have presented only that legislation which we felt was most important or far-reaching. Because value judgments as to importance may differ, however, we are listing here the titles of all other bills of relevance to members of the criminal justice system. Hopefully the titles of the bills will give some insight as to their content.

The chapter numbers to the left of each title refer to the chapters in the publication "Public Laws as enacted by the 106th Legislature". Anyone wishing to read any enactment of the regular session of the 106th Legislature should consult this publication. Any law enforcement agency which does not have a copy of this publication can obtain one without charge from:

The Director of Legislative Research
State House
Augusta, Maine 04330

[Continued on page 11]

- Chapter
- 5 AN ACT Repealing the Law Providing for the Fingerprinting of School Children
- 27 AN ACT Repealing the Prohibition Against Mobile Home Sales on Sunday
- 31 AN ACT Relating to Lights on Motor Vehicles of Baxter Park Rangers
- 38 AN ACT Relating to Lights and Reflectors on Bicycles
- 39 AN ACT Relating to Penalty for Buying or Receiving Stolen Property
- 53 AN ACT Relating to Motor Vehicle Auxiliary Lights on Snow Plowing Vehicles
- 54 AN ACT Relating to Display of Headlamps on Parked Vehicles
- 58 AN ACT Relating to Display of Vehicle Headlamps
- 71 AN ACT Relating to Penalty for Failure to Stop Vehicles on Signal of Officer Enforcing Fish and Game Laws
- 83 AN ACT Providing for Deputy Clerks of the District Court
- 85 AN ACT Providing that the Running of Statutory Time Periods be Governed by the Maine Rules of Civil Procedure and the Maine Rules of Criminal Procedure
- 93 AN ACT Relating to Identity of Defendant in Suspension Cases Under Motor Vehicle Laws
- 99 AN ACT Relating to Hunting from Public Ways
- 102 AN ACT Relating to Beano or Bingo Licensing
- 129 AN ACT to Increase Fees of Deputy Sheriffs
- 136 AN ACT Changing the Name of Maine Law Enforcement and Criminal Justice Academy
- 140 AN ACT Relating to Age for Operation of Vehicles on Special Registration Permits
- 142 AN ACT Relating to Use of Vending Machines on Sundays
- 145 AN ACT Relating to the Treatment and Services to Minors for Drug Abuse without Parental Consent
- 182 AN ACT Pertaining to Unlicensed Dogs
- 185 AN ACT Relating to Penalty for Operation of Motor Vehicle under Influence of Intoxicating Liquor
- 194 AN ACT Relating to Definition of Litter under Maine Litter Control Act
- 196 AN ACT to Permit Sale of Beer and Table Wine on Sunday for Off-premise Consumption
- 200 AN ACT to Provide Special Probation in Criminal Nonsupport Cases
- 216 AN ACT Relating to Appointment of Complaint Justices in District Court
- 235 AN ACT to Clarify Maine Litter Control Act
- 236 AN ACT Relating to Penalty for Reckless Driving
- 243 AN ACT Relating to Release and Discharge of Persons Acquitted by Reason of Mental Disease or Mental Defect
- 263 AN ACT Relating to Membership in Maine Law Enforcement Planning and Assistance Agency
- 296 AN ACT Allowing Municipalities to Insure Against Personal Liability of Their Officers, Officials and Employees
- 301 AN ACT Relating to Fees of Municipal Officers or Constables as Witnesses
- 305 AN ACT to Permit Residents of Adjoining Counties to Serve as Assistant County Attorney in Oxford County
- 313 AN ACT to Provide that Wages Earned by Prisoners in State Correctional Institutions shall Draw Interest Pending Release of Prisoner
- 329 AN ACT Relating to Penalty for Death Caused by Violation of Law by Operator of Motor Vehicle
- 330 AN ACT Relating to Penalty for Recklessly Causing Death by Operation of a Motor Vehicle
- 383 AN ACT Increasing Compensation of Full-time Deputy Sheriffs in all Counties
- 395 AN ACT Relating to State Police Retirement System
- 396 AN ACT Relating to Licenses to Carry Weapons
- 398 AN ACT Relating to Wilful Killing or Injury to Certain Animals
- 404 AN ACT Relating to Penalty for Burglary
- 433 AN ACT to Insure that Citizens are Granted Due Process of Law by Government Agencies
- 434 AN ACT Relating to Criminal Contempt for Failure to Pay Alimony and Support of Children
- 437 AN ACT Relating to Motorcycle Operators Licenses
- 461 AN ACT Relating to Qualifications for Jury Service of 18-year-old Voters
- 494 AN ACT Relating to Penalty for Criminal Trespass in Buildings
- 499 AN ACT to Provide a Minimum Fine for Obstructing Justice
- 507 AN ACT to Provide for Reduction of Sentence for Inmates of State Correctional Facilities who Donate Blood
- 518 AN ACT to Provide Protection of Fetal Life and the Rights of Physicians, Nurses, Hospitals and Others Relating to Abortions
- 519 AN ACT Permitting the Sale of Liquor at Certain Golf Courses
- 523 AN ACT Providing for Fine or Suspension under Liquor Laws
- 538 AN ACT Relating to Transfer of Prisoners Committed to County Jails
- 587 AN ACT Providing for Motor Vehicle Operator's License Classification
- 588 AN ACT Changing the dates for Registration of Automobiles
- 596 AN ACT Providing for an Additional District Court Judge at Large
- 599 AN ACT Increasing the Number of Superior Court Justices and Official Court Reporters
- 604 AN ACT Relating to Sudden Infant Death

Any member of the criminal justice community may obtain further information about any bill mentioned in this issue of ALERT by writing the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, State House, Augusta, Maine 04330.

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.

Search and Seizure—Radiographic Scanning JPL

Defendant was convicted of possession of heroin and appealed. Police officials, having been notified that defendant had been receiving illegal drugs from Vietnam through the mails, requested postal officials to watch defendant's mail. Two bulky letters addressed to the defendant arrived and postal officials turned them over to a customs agent who, through radiographic scanning, detected a powder substance and obtained a federal search warrant to open the letters. When the opened letters produced a quantity of heroin, the letters were resealed and delivered to the defendant. Based upon this information, a warrant was issued to local police and a search of defendant's house produced the heroin which the Defendant was ultimately convicted of possessing.

Defendant argued that since the radiographic scanning of the envelope constituted a search, the federal warrant

[Continued on page 12]

authorizing the opening of the letter was illegal and therefore the search warrant issued to local police was invalid because it was based upon illegally seized information.

The Law Court said that the limited invasion of radiographic scanning was not a search since Defendant could not reasonably expect that his mail would not be subject to some type of limited examination which did not involve opening the sealed envelope. Even if the radiographic scanning was a search, the Law Court held that it was based upon reasonable grounds and was justified under the broad powers given to customs officials to search. *State v. Gallant*, 308 A.2d 274 (Maine Supreme Judicial Court, 1973)

Assault and Battery—High and Aggravated JP

Defendant was convicted of assault and battery, high and aggravated in degree and appealed. Defendant, after having cut telephone wires to prevent notification to the police, forcibly entered the dwelling house where his (defendant's) wife and children were temporarily staying. Using his two and one half month old baby as a hostage and having a knife in the other hand, defendant threatened to kill his baby if his orders were not obeyed. After leaving the dwelling, the defendant left the baby in the mud and water where it might have drowned or suffocated.

The major issue on appeal was whether the facts sufficiently proved that the assault and battery on the baby were of a high and aggravated nature. Defendant argued that since no violent injury resulted to his baby, the element of serious bodily injury was lacking and therefore he could not be convicted of high and aggravated assault and battery. The Court disagreed, saying "violent injury" is a term of art describing only the unlawful touching of a person and does not relate to the circumstances which make an assault and battery one of a high and aggravated nature. Citing a prior case, *State v. Bey*, 206 A.2d 413, (1965) the Court noted that serious bodily injury is "but one of a number of circumstances which may characterize the assault and battery as high and aggravated in nature. (See August 1973 ALERT, p. 6). The Court said the degree of assault and battery must be decided on a case by case basis by "considering the totality of the circumstances." Applying the totality of the circumstances test to this case, the Court found sufficient evidence existed to convict the defendant of high and aggravated assault and battery. *State v. Smith*, 306 A.2d 5, (Supreme Judicial Court of Maine, June 1973).

Receiving Stolen Property JP

Defendant was convicted of receiving stolen property in violation of 17 M.R.S.A.

3551 and appealed. Police, acting on an informer's tip that defendant and another person were absconding with goods stolen in a recent theft, had established a roadblock. As the car in which defendant was a passenger approached the roadblock, one of the officers observed defendant suddenly bend forward in his seat. The car was stopped and searched. Part of the stolen property was found under the driver's seat.

Although the Court suggested that the stolen property might have been the fruit of an illegal search, it did not rule on that issue. Instead, the Court sustained defendant's appeal on the ground that there was insufficient proof of possession to support a conviction of receiving stolen goods. No use could be made of the informant's tip in proving possession. Furthermore, although testimony as to presence of the stolen goods in the car was relevant and admissible, presence alone would be insufficient to support a finding of possession. *State v. Mosher*, 270 A.2d 451 (Supreme Judicial Court of Maine, 1970), was found to be squarely in point. The Court rejected the State's attempt to distinguish *Mosher*, concluding that defendant's movement in bending forward in his seat might have been sufficient to support probable cause but would not suffice to prove possession beyond a reasonable doubt.

The Court also held that even if the State had proved possession beyond a reasonable doubt, receipt and knowledge could not be inferred from recent unexplained possession. Since Maine permits an inference of larceny from recent unexplained possession, it would be logically inconsistent to permit such evidence simultaneously to raise an inference of receipt and knowledge since the receiver of stolen goods cannot himself be the thief. *State v. Dall*, 305 A.2d 270 (Supreme Judicial Court of Maine, May 1973).

Threatening Communications JP

Defendant was convicted of threatening the lives of police officers and appealed, claiming the statute violated his First Amendment right of free speech. Defendant, while being detained in jail for intoxication, stated "When I get out of this jail, I'm going to go home, get my 30-40 Craig out of closet, and I'm going to kill me some f. . . police officers."

The Court held that threatening speech does not come under the protection of the First Amendment and that the Maine statute 17 M.R.S.A. §3701 prohibiting threats to injure persons or property was not unconstitutionally vague or overbroad as construed. The Court further said that the Defendant's intoxication when the threat was made did not excuse his unlawful act. *State v. Hotham*, 307 A.2d 185 (Maine Supreme Judicial Court, 1973)

Fair Trial—Special Interrogatories to Jury JP

Defendant was convicted of being an accessory before the fact to an armed robbery and he appealed. Defendant argued, among other things, that his sentence of 10 to 30 years constituted cruel and unusual punishment and that his constitutional right to an impartial jury was violated when the jury was required to return "special findings" in the event of a "not guilty" verdict.

The Law Court held that the 10 to 30 year sentence was not cruel and unusual since the maximum sentence could have been any term of years and the defendant had an extensive history of criminal activity.

The Law Court also held that it is error to require a jury to answer special interrogatories in the event of a not guilty verdict. However, the error does not violate the constitutional right to an impartial jury unless the interrogatories were designed to "lead the jurors down the guilty trail" and when the jury verdict becomes but a "hollow affirmation from jurors catechized by the questions they have been compelled to answer."

Viewing the facts of the Defendant's case and the extensive jury instructions, the Law Court found the special interrogatories to be harmless error and no constitutional right was violated. *State v. Heald*, 307 A.2d 188, (Maine Supreme Judicial Court, 1973)

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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 intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

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

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