

MAINE STATE LEGISLATURE

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ALERT

JANUARY 1976

CRIMINAL DIVISIONFROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE**MESSAGE FROM THE
ATTORNEY GENERAL
JOSEPH E. BRENNAN**

This is the first of several ALERT Bulletins on the new Maine Criminal Code. Some of the ALERTs will deal broadly with the Code and others will deal with specific aspects. Also, one issue of ALERT will cover any changes in the Code which may be enacted by the Special Sessions of the 107th Legislature. We would appreciate comments on the helpfulness of these articles and any suggestions for improvements.

I would like to announce that video-taped lectures on the Code prepared by Professor Sanford J. Fox, Chief Counsel to the Maine Criminal Law Revision Commission, will be shown on all Maine public television stations during late February and early March. The tapes will be aired from 7:10 to 8:00 A.M. on February 23, 25, and 27 and on March 1, 3, 5, 8, 10, 12, and 15. These taped lectures are the same as those used in the classes conducted by the District Attorneys in each prosecutorial district. The televised lectures should provide a good review for those officers who attended the classes and a necessary background for part-time officers and other criminal justice personnel who did not attend the classes.

Joseph E. Brennan
JOSEPH E. BRENNAN
Attorney General

MAINE CRIMINAL CODE I

Introduction and General Principles

In 1975, the Regular Session of the 107th Maine Legislature enacted the Maine Criminal Code, a complete revamping of Maine's criminal laws. The new Code (Title 17-A of the Maine Revised Statutes) goes into effect on March 1, 1976. At present, the Maine Criminal Code Revision Commission and the Maine Department of the Attorney General are conducting an educational program on the Code for law enforcement officers in Maine under a grant from the Maine Criminal Justice Planning and Assistance Agency. The program includes classes conducted by the District Attorneys in their respective prosecutorial districts and is being coordinated by Assistant Attorney General Stephen Diamond. The core of this educational program is a series of videotaped lectures on the Maine Criminal Code by professor Sanford J. Fox, Chief Counsel to the Criminal Law Revision Commission.

This issue of ALERT and others following it are designed to supplement the education project

described above. Also, the ALERTs devoted to the Code will provide a guide to understanding the Code for those criminal justice personnel who have not attended the classes given by the District Attorneys or viewed the videotapes.

It should be strongly emphasized that the ALERTs devoted to the Code are not a substitute for reading the Code but are designed merely to provide comments and suggestions to aid in understanding the Code. In other words, the ALERT articles should be read *only* in conjunction with a reading of the Code. The ALERT articles will be oriented to the law enforcement officer and the effect of the Code upon his daily duties. Special emphasis will be given to the broad purposes behind various provisions of the Code and the changes from previous law effected by the Code. Again, the ALERT articles usually will not provide summaries or explanations of Code provisions, and the articles will be of little use unless read simultaneously with the Code.

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OVERVIEW

The enactment of the Maine Criminal Code grew out of a broadly based dissatisfaction with the existing criminal law. Many existing criminal statutes are complex and cumbersome to apply. The statutes use old imprecise words and terms such as "malice aforethought" which are difficult for judges, lawyers, and defendants to understand. Some areas of the existing criminal law are extremely inaccessible and require research into court decisions of other state and federal jurisdictions to determine the rules applicable in Maine. Also, many people believe that under the existing criminal law in Maine, certain types of behavior are either not penalized sufficiently or are penalized too heavily. Finally, many believe that the sentencing procedure under existing law is haphazard and irrational with possible sentences having little relation to the relative seriousness of crimes.

To answer these and other problems with the existing criminal law in Maine, the Maine Criminal Code attempts to set up a rational, coherent, and understandable body of law to deal with crime and punishment in Maine. Some of the outstanding features of the new Criminal Code are described below.

Definitions

The greater part of the Maine Criminal Code consists of definitions of offenses and definitions of words and terms. The definitions of all the offenses consist generally of a statement of the forbidden acts and a statement of the culpable state of mind which a person must have before he can be convicted of the offense. This state of mind requirement is often called the *mens rea*, which is a Latin phrase meaning guilty mind or criminal intent. Criminal offenses have the *mens rea* requirement because, otherwise, accidental injuries, the borrowing of property, and like

behavior would subject people to criminal penalties. *Mens rea* is not a new concept in the law, and under the existing criminal laws, the *mens rea* requirement is expressed by a variety of different words such as wilfully, feloniously, corruptly, recklessly, etc. Most of these words are not clearly defined in relation to each other and usually one must consult reported court decisions to determine their meaning. The Maine Criminal Code simplifies matters by using only four words to describe the *mens rea* and it clearly defines those words in the Code. The four words are "intentionally," "knowingly," "recklessly," and "negligently," and their definitions can be found in 17-A M.R.S.A. §10.

Law enforcement officers should become thoroughly familiar with the meanings of the four words describing the *mens rea* and should gather evidence on the *mens rea* requirement for every crime they investigate. Usually, direct evidence of the *mens rea*, (such as the admission of the perpetrator of a crime that he did it intentionally) is not available. Therefore, the officer must establish the *mens rea* by observing and recording the defendant's actions, explanations, and the surrounding circumstances and drawing logical conclusions from these facts. The importance of establishing the *mens rea* must be strongly emphasized because without it, a person cannot be convicted of a crime that has *mens rea* as one of its elements.

The definitions of words and terms used throughout the Code appear in 17-A M.R.S.A. §2 and at the beginning of certain chapters of the Code. The definitions in §2 appear over and over again in the Code and law enforcement officers should become familiar with all of them. The definitions at the beginning of certain chapters apply only to the provisions of those chapters. It may be impossible to understand some offenses if the

definitions at the beginnings of chapters are not first understood. When looking for the meaning of a word or term, both §2 and the beginning of the chapter in which the term appears should be consulted.

Officers should read the wording of all definitions of words and terms very carefully. Some definitions are not all-inclusive but are given in general terms with illustrations. An example is the definition of "property" given in 17-A M.R.S.A. §352. The meaning of "property" under the Code is "anything of value." The items listed in (1)(A) through (1)(E) are merely illustrations of things of value. An item, even though not listed, could still be property as long as it was a thing of value.

Other definitions, such as that for "restrain" in 17-A M.R.S.A. §301(2) are all-inclusive and state completely in themselves the meaning of the word defined. Thus, if a person does not do one of the acts specifically described in 17-A M.R.S.A. §301 (2) (A), (B), or (C), he cannot be convicted of a crime (such as kidnapping) which has restraint as one of its elements.

Sentencing

A major accomplishment of the Maine Criminal Code is to completely revise Maine's sentencing structure to make it more just and rational. Under the existing sentencing structure there are over sixty different possible sentences, each crime having its sentence included with the definition of the crime. With so many possible distinctions, there is little rational consistency between the seriousness of offenses and their possible penalties. Also, under existing law, because of indeterminate sentences, parole, and discretionary release, there is little relationship between the length of the sentence and the length of time actually served by the person convicted.

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The Code has changed all this and has placed all crimes except the two most serious criminal homicides in five penalty classes—A, B, C, D, and E. This new structure enables crimes of like severity to be assigned like penalties without an undue number of confusing distinctions. It also enables the legislature, when creating new crimes in the future, to assign penalties to them on a more rational basis. Furthermore, under the Code, the amount of time of imprisonment assigned by the judge in his sentence will be the amount of time actually served by the defendant. The time of sentence can be decreased only for good time earned by the prisoner and through other limited special procedures provided by law. There are no indeterminate sentences, no parole, and no discretionary releases under the Code.

Many other important changes in the law relating to punishment of offenders can be found in Chapters 47, 49, 51 and 53 of the Code. These chapters will be discussed in more detail in a later issue of ALERT.

Reassessment of Penalties

The revision of Maine's sentencing structure led to a reassessment of the penalties applicable to various types of conduct. This reassessment took effect in three different ways:

1. Some types of conduct were decriminalized and made civil violations, for which no penalty of imprisonment is possible under the Code. An example is the possession of a usable amount of marijuana.

2. Other types of conduct which were formerly questionable but lawful have now been made criminal. The best example of this is that certain questionable practices by merchants which were formerly permitted have been criminalized as theft by deception. (17-A M.R.S.A. §354.)

3. Some new criminal offenses have been created, especially under

Chapter 25 on Bribery and Corrupt Practices.

Further examples of reassessment of penalties appear frequently in the Code and will be pointed out as individual sections of the Code are discussed in this and future ALERTs.

Comprehensiveness

The new Criminal Code (Title 17-A of the Maine Revised Statutes) does not contain every possible criminal offense in Maine. There are approximately 900 criminal offenses outside the Code, some in every title of the Maine statutes including Title 17. Nevertheless, beginning March 1, 1976, the general principles of the Code will be applicable to all criminal offenses whether or not they appear in the Code itself. These general principles include the rules of pleading and proof, the provisions on territorial applicability, the rules of justification, and all the provisions on sentencing and punishment. By drawing all the possible criminal offenses in the Maine statutes into the overall scheme of the Code, the Code achieves a comprehensiveness and uniformity of approach for Maine's criminal law.

Simplification

Many of the crimes and procedures under existing Maine law have become overly complex and unwieldy due to legislative amendment and court interpretation.

Simplification of these laws and procedures is one of the main reasons behind the establishment of new definitions of offenses and new procedures in the Code. Examples of simplified definitions and procedures will be pointed out as individual sections of the Code are discussed in this and future ALERTs.

Accessibility

One of the big problems with the existing Maine criminal law is that

some of the rules of conduct and procedure have never been specifically set out in the statutes. In order to find the law in these areas, one must look to court decisions of Maine and other jurisdictions. Researching the law in this manner is a cumbersome, time-consuming process. The Code has attempted to solve the problem of the accessibility of some areas of the criminal law by setting out previously uncodified rules for the first time. The primary example in the Code is Chapter 5 on *Justification*, the provisions of which appear for the first time in Maine in statutory form.

The remainder of the treatment of the Code in the ALERT will consist of comments and suggestions on individual sections of the Code. Although some sections will not be covered in the ALERT, all sections are important and should be carefully read. Emphasis will be placed on those sections which affect law enforcement officers most directly. All references to sections and chapters in the forthcoming discussion will be references to Title 17-A of the Maine Revised Statutes unless otherwise designated.

PART ONE GENERAL PRINCIPLES

CHAPTER 1—PRELIMINARY §1 Title; effective date; severability

Although the Maine Criminal Code goes into effect on March 1, 1976, law enforcement officers must still apply the old criminal law in certain situations after March 1. If an officer arrests a person for a crime on or after March 1, 1976, but any element of that crime was committed before March 1, the old law should apply. Also, if an officer does not know when the crime was committed, but the time of the crime can be reasonably interpreted to include March 1, the officer should again handle the situation under the old law. Problems

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involving which law to apply may be frequent during the early days of the new Code, but will eventually taper off and disappear.

§2 Definitions

As stated earlier, the definitions of words and terms in this section are used throughout the Code, and every law enforcement officer should become completely familiar with them.

§3 All crimes defined by statute; civil actions

This section illustrates in another way the comprehensiveness of the Maine Criminal Code. For the first time in Maine, the law declares that all conduct subject to criminal penalties is in the statutory law. There is no longer any possibility of a person being convicted of a common-law crime, i.e., a crime created by custom or court decision. Therefore, if a person's conduct does not fall within the prohibitions of a specific criminal statute, whether inside or outside the Code, a law enforcement officer should not begin criminal proceedings against him.

§4 Classification of crime; civil violations

Law enforcement officers should be aware that *all* criminal offenses in Maine will come under the new sentence classification system on March 1, 1976. Subsections 2 and 4 of this section provide conversion tables by which officers can determine the class of any crime found outside the Code. All crimes included in the Code specifically state the class of the crime. Officers should note that subsections 2 and 4 contain only conversion tables and do not contain the terms of imprisonment for each class of crime. The terms of imprisonment can be found in §1252 of the Code.

It is important for officers to know the classification of each crime for purposes of arrest. The Code does away with the present felony-misdemeanor distinction,

but legislation is being prepared to the effect that, for the purposes of arrest, Class A, B, and C crimes will be treated as felonies, and Class D and E crimes will be treated as misdemeanors unless otherwise specifically provided. Therefore, in order to know whether he can arrest on probable cause or only when the crime is committed in his presence, the officer needs to know the class of the crime. Officers are encouraged to become familiar with the conversion tables in subsections 2 and 4.

The combined effect of subsections 3 and 4 is that when an individual engages in conduct prohibited by a statute outside the Code and which is not punishable by a penalty of imprisonment, he is guilty of a *civil violation* and not a criminal offense. Officers are not authorized to arrest for civil violations. Legislation is now being considered to set up a procedure to enforce civil violations. The procedure is likely to be similar to that now in use for traffic infractions. Further information on enforcement of civil violations will appear in a future issue of ALERT.

§5 Pleading and proof

This section deals with the prosecution of criminal cases and is primarily of interest to judges and attorneys. Nevertheless, the successful prosecution of a criminal case depends on effective evidence-gathering by law enforcement officers. Therefore, subsection 1 of this section is of vital importance to law enforcement officers. Because no person may be convicted of a crime unless each element of the crime is proved beyond a reasonable doubt, law enforcement officers must gather sufficient evidence on each element of every crime they are investigating. It is strongly suggested that officers analyze every criminal offense by breaking it up into its elements as follows:

1. The forbidden conduct;
2. The attendant circumstances

specified in the definition of the crime (e.g. 17 M.R.S.A. §201 (2) (A through F));

3. The required culpable state of mind or *mens rea* (intention, knowledge, recklessness, or negligence);
4. Any required result.

Some offenses like Criminal Threatening (17-A M.R.S.A. §209), may not have elements fitting into all four categories. Other offenses, like Theft (17-A M.R.S.A. §§351-363), may require detailed proof of one or more complex elements or a choice of alternatives to satisfy one element. Breaking every offense down into its elements helps to determine whether an officer has investigated his case completely and may indicate aspects of a case that need further investigation.

§6 Application to crimes outside the Code

This section indicates the application of the Code's general principles to crimes outside the Code. It was discussed earlier in this article.

§7 Territorial applicability

§8 Statute of limitations

§9 Indictment and jurisdiction

These three sections are primarily of interest to judges and attorneys. Nevertheless, they should be read carefully by law enforcement officers, especially because officers may be required to gather evidence on territorial applicability of crimes or the period of limitations for prosecution.

§10 Definitions of culpable states of mind

§11 Requirement of culpable mental states; liability without culpability

The four terms used to describe culpable states of mind were discussed earlier in this article. Officers should become thoroughly familiar with the meanings of each of these words. It should be noted

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that the definition of each of the words is different depending on whether the word is applied to the *result of a person's conduct* or to *attendant circumstances*. Also, under §11 subsection 1, when the *mens rea* element is described in crimes outside the Code in words like "wilfully," "corruptly," "maliciously," or the like, that element is satisfied if the person acted "intentionally" or "knowingly." Therefore, when investigating crimes outside the Code, officers should substitute the words "intentionally" or "knowingly" for other words describing a state of mind.

Subsections 2, 3 and 4 of §11 are included to provide guidelines in reading definitions of crimes in the Code. They contain basic common sense advice and rules to help persons avoid overly technical interpretations. Whenever an officer becomes confused in reading a crime definition in the Code, he should refer back to these subsections for assistance.

§12 De minimis infractions
§13 Lesser offenses
§14 Separate trials

These three sections again are primarily of interest to judges and attorneys. It should be noted that under §12 *only* a court, either upon notice to or motion of the prosecutor, can dismiss a prosecution because the defendant's conduct is a trivial offense. A law enforcement officer does *not* have this power to dismiss cases. Nevertheless, if an officer, upon reflection or further investigation, believes that prosecution of a person he has arrested or summonsed would be unjust or uncalled for, he should inform the prosecuting attorney and state the reasons for his belief.

CHAPTER 3—CRIMINAL LIABILITY

§51 Basis for liability
§52 Ignorance and mistake
§53 Immaturity

§54 Duress
§55 Consent
§56 Causation
§57 Criminal liability for conduct of another; accomplices
§58 Mental abnormality
§59 Procedure upon plea of not guilty coupled with plea of not guilty by reason of insanity
§60 Criminal liability of an organization
§61 Individual liability for conduct on behalf of an organization
§62 Military orders

This chapter of the Code is primarily of concern to judges and attorneys. Nevertheless, law enforcement officers should read the sections and comments carefully in order to understand the defenses available to defendants and various other aspects of criminal liability. Several items in this chapter are of direct interest to law enforcement officers.

§52 (4) (B) states that a defendant has an affirmative defense to a prosecution for a crime if he was mistaken about the law because he reasonably relied on an erroneous "official interpretation of the public officer or body charged by law with the responsibility for the interpretation, administration, or enforcement of the statute defining the crime." Under this subsection, if a law enforcement officer gives a person incorrect information on the criminal law, the officer may be providing the person with an affirmative defense to a prosecution for engaging in conduct in reliance upon that information. Since §52 (4) (B) does not impose any duty on law enforcement officers to make official interpretations of law, officers are advised not to provide such interpretations unless they are absolutely certain they are correct.

§53 makes no major changes in Maine procedure relating to juveniles. Officers should handle juvenile matters as they do under existing law, except of course, that Code provisions will apply to those

situations in which juveniles may be criminally prosecuted.

§61 provides that a person acting on behalf of an organization may be held criminally accountable to the same extent as if he had been acting purely on his own. Law enforcement officers may therefore arrest persons such as corporate officers, business partners, and other agents of organizations for criminal conduct committed as an employee of the organization just as they would for any other criminal defendant.

CHAPTER 5—JUSTIFICATION

§101 General rules
§102 Public duty
§103 Competing harms
§104 Use of force in defense of premises
§105 Use of force in property offenses
§106 Physical force by persons with special responsibilities
§107 Physical force in law enforcement
§108 Physical force in defense of a person

The rules of justification spell out the circumstances under which it is permissible for private citizens and law enforcement officers to use force. This chapter is unique in that it is the first time in Maine that the law relating to the use of force has been specifically set out in a statute. Law enforcement officers should read the text and comments carefully, especially §107, *Physical force in law enforcement*.

Because of the importance of this area of the law and the extent of the changes made in the Code, the rules of justification will not be discussed in this issue of ALERT. A future issue of ALERT will be devoted to this topic. Officers should note that after March 1, 1976, the March 1974 issue of ALERT on *Use of Force* should be disregarded and the provisions of Chapter 5 of the Code consulted instead.

MAINE COURT DECISIONS

SEARCH & SEIZURE:

A § 2.4 Automobiles-Without
a Warrant

A § 2.5 Persons and Places-
Without a Warrant

EVIDENCE/WITNESSES:

E § 1.1 Circumstantial-
Inferences

E § 1.3 Identification

E § 1.13 Relevant-Material

Defendants were found guilty of breaking and entering in the nighttime with intent to commit larceny (17 M.R.S.A. § 754). On December 17, 1972, a nearby resident observed a man carrying something under his arm, walking out of a V.F.W. building and into the V.F.W. parking lot. The resident, knowing the building to be closed, called the manager of the V.F.W. canteen, who in turn notified the police and immediately drove to the V.F.W. building. Upon arriving at the V.F.W. building, the manager observed two men near a white station wagon in the V.F.W. parking lot. An officer arrived on the scene immediately thereafter and recognized both men who were in the parking lot. The officer also noticed one of the men, Cress, drop a paper bag, enter the white station wagon, and drive away with a third passenger. An inspection of the V.F.W. building revealed several containers used to collect donations had been cut open and the contents removed, and a container used to collect money for muscular dystrophy was missing completely. The paper bag dropped in the V.F.W. parking lot by Cress contained a muscular dystrophy container similar to the one missing from the V.F.W. building. Immediately thereafter, the white station wagon was stopped, the defendants placed under arrest,

and the third occupant of the car instructed to drive the car to the police station. At the police station, officers took the keys to the car and conducted a "routine inventory search" of the car's contents which produced a blue dish containing coins plus additional coins on the floor of the car. The total value of all coins found in the car amounted to \$14.00. A search of defendant Cress before he was placed in a cell produced \$18.21 in coins. On appeal, defendants challenged the admissibility of the paper bag and its contents found in the parking lot, the \$18.21 in coins seized from Cress, and the \$14.00 in coins found in the car.

As to the admissibility of the paper bag and the muscular dystrophy container therein, defendant claimed there was no adequate identification of these nor did they have any probative worth since there was no *direct* link of these items to the crime. The court said that ownership of personal property or possessory rights therein need not be established by direct proof, ". . . but may be proven by circumstances and inferences as well as by direct evidence." (344 A. 2d at 60) In this case the paper bag with its contents was dropped by the defendant near the scene of the crime, the contents were similar to an item missing from the V.F.W. building and therefore there was a link in the chain of circumstances tying defendants to the crime.

Defendant Cress challenged the admissibility of the coins taken from his person at the jail since there was no identification of these coins as the ones taken in the break of the V.F.W. building. The court held that the identification of defendants near the scene of the crime, the identification of the paper bag and its contents, and the large number of coins taken in the break sufficiently established the relevancy of this evidence to allow its admissibility.

The court also held that the search of the white station wagon at the station was constitutionally justified. Refusing to rest its decision on any "routine inventory theory," the court said the facts clearly provided officers at the time defendants were arrested on the highway with probable cause to believe the car was used in and contained fruits of the crime. Exigent circumstances existed because the car was on the road and could be moved easily. The fact that the car was driven to the police station did not terminate the right to search. Also, the fact that the officers believed they were justified in searching on the basis of a routine inventory search and it later turned out that they were justified under some other theory did not invalidate the search. *State v. Cress*, 344 A.2d 57 (Supreme Judicial Court of Maine, August 1975).

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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