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ALERT

CRIMINAL DIVISION

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

MAINE CRIMINAL CODE II

Substantive Offenses and Punishments

MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

State law requires that we update the ALERT mailing list annually by contacting all recipients to determine if they wish to continue receiving the ALERT. Any recipient who wishes to remain on the mailing list must write or call the Law Enforcement Education Section giving his or her name and the address to which the ALERT should be sent. Law enforcement agencies should send lists of all active personnel with home addresses rather than have individual officers contact us. Any recipient whose name and address is not received by April 30, 1976, will be removed from the mailing list. Please write to the Law Enforcement Education Section, Department of the Attorney General, State House, Augusta, Maine 04330 or call 289-2146.

Also, I would like to announce a new feature of the ALERT Bulletin to appear under the FORUM column. The new feature will be entitled *News from the Academy* and will consist of information, announcements, and other items regarding the Maine Criminal Justice Academy in Waterville.

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

Many amendments, corrections and clarifications to the Maine Criminal Code have been proposed to the Special Session of the 107th Legislature. In order that criminal justice personnel and the public can be properly notified and that the Code and any enacted changes can become effective on the same day, the Special Session has moved back the effective date of the Code from March 1, 1976 to April 1, 1976.

The April issue of ALERT will discuss any changes to the Code that are enacted by the Special Session of the 107th Legislature. This issue of ALERT completes the discussion of the Code started in last month's ALERT but does not discuss any of the proposed changes to the Code. Officers should read this article with an understanding that many of the sections may be changed.

PART TWO
SUBSTANTIVE OFFENSES
CHAPTER 7—OFFENSES OF GENERAL APPLICABILITY

§151 Conspiracy
§152 Attempt
§153 Solicitation
§154 General provisions regarding Chapter 7

All three of the crimes defined in this chapter describe behavior in which the intended criminal objective need not have been reached. Because of this, there is a great danger that criminal liability may be imposed unjustly or unfairly. The crimes in this chapter, therefore, are very carefully drawn and contain a number of safeguards. For example, the crimes of conspiracy and attempt both require a substantial step toward the commission of a crime before criminal liability can be incurred and the crime of solicitation applies only to Class A and B crimes. Law enforcement officers may find these sections complex and hard to understand and should read them very carefully. It is very helpful to break down each of these crimes into its elements in order to determine what kinds of evidence must be gathered to sufficiently establish the commission of each crime.

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CHAPTER 9—OFFENSES AGAINST THE PERSON

Under the new Code, the terms murder and manslaughter are no longer used. Instead the Code has established six categories of criminal homicide ranging from criminal homicide in the first degree to criminal homicide in the sixth degree. Law enforcement officers should note that there is a big difference between homicide and *criminal* homicide. The word homicide merely means the killing of one human being by another. Any such killing, whether accidental or purposeful, is a homicide. A *criminal* homicide, however, is the killing of another person under circumstances making the killing unlawful. Sections 201 through 206 describe the circumstances under which homicide is unlawful and classify the different degrees of homicide according to their seriousness.

§201 Criminal homicide in the 1st degree

§202 Criminal homicide in the 2nd degree

Criminal homicide in the first degree is the most serious crime in the Maine law. This crime illustrates another attempt by the Code to simplify the criminal law. Criminal homicide in the first degree depends for its definition on criminal homicide in the second degree. Specifically, criminal homicide in the first degree is criminal homicide in the *second* degree plus any of the aggravating circumstances enumerated in §201(2) (A through F). Offenses like criminal homicide in the first degree which depend for their definitions on the definitions of other crimes are sometimes called "piggyback" offenses. Many other examples of piggyback offenses are found throughout the code. Piggyback offenses make the law easier to understand because similar offenses of varying degrees of seriousness build logically upon each other because of their common elements.

An important aspect of criminal homicide in the first degree is that the enumerated aggravating circumstances are each possible *elements* of the crime and must be proven beyond a reasonable doubt under §5 of the Code. Officers investigating a homicide, therefore, must gather evidence on aggravating circumstances, because a person cannot be convicted of criminal homicide in the first degree without such evidence. One of the circumstances (§201 (2) (D)) is of particular interest to law enforcement officers, because it states that a homicide is criminal homicide in the first degree if it was committed for the purpose of avoiding or preventing lawful arrest or effecting an escape from lawful custody.

Two characteristics common to criminal homicide in the first and second degrees are worthy of mention. One is that, because of the seriousness of the crimes, they fall outside the five sentencing classes set out in §1252. The special sentencing classifications for these two most serious crimes can be found in §1251. The other common characteristic is that neither of these two crimes is subject to the periods of limitations set out in §8. This simply means that a prosecution for either of these crimes may be brought at any time, despite the passage of a long period of time.

§203 Criminal homicide in the 3rd degree

Criminal homicide in the third degree is very similar to the felony-murder rule, a basic characteristic of which is that an individual participant in a felony can be criminally liable for homicide whether or not he caused the death of another. Officers should note that a person becomes criminally liable for homicide under this section not only if he is *committing* a Class A crime or escape, but also if he is *attempting* or *fleeing after committing or attempting to commit* a Class A crime or escape. Also, the death of a person must be a "natural and probable consequence" of such a commission, attempt, or flight. The term "natural and probable consequence" means that *not all* homicides that may result from the prohibited activity are punishable as criminal homicide in the third degree, but only those directly attributable to the criminal activity. Officers investigating homicides should carefully record all circumstances which indicate that a homicide was the "natural and probable consequence" of committing, attempting, or fleeing after committing or attempting a Class A crime or escape.

§204 Criminal homicide in the 4th degree

This section is similar to the existing law on manslaughter found in 17 M.R.S.A. §2551. §204(1) (A) punishes homicide caused by a person's disregard of circumstances posing a serious danger to human life. Officers should refer to the definition of recklessly in §10. §204(1) (B) deals with homicides committed under the influence of extreme emotional disturbance or extreme mental retardation. The offense is defined differently from 17 M.R.S.A. §2551 and should be read carefully.

§205 Criminal homicide in the 5th degree

This section punishes homicide caused by a person's failure to be aware of circumstances posing a serious danger to human life when that person should have been aware of such circumstances. Officers should refer to the definition of criminal negligence in §10.

§206 Criminal homicide in the 6th degree

The offense of causing or aiding suicide is new to Maine. The word

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solicit is to be given its common meaning—to incite a person to action.

§207 Assault
§208 Aggravated Assault

The meaning of assault under the Code is not the same as under the existing law. Under existing law, assault means an *attempt* to strike, hit, touch or do any violence to another. Under the Code, only conduct that actually *results* in bodily injury or offensive physical contact is considered to be an assault. The Code does not use the term "battery." The provisions of the Code on Attempt (§152), Criminal Threatening (§209), and Terrorizing (§218) deal with attempts and threats to do violence to another that do not result in bodily injury or offensive physical contact. Officers should note that the definition of "bodily injury" can be found in §2(5). The definition is broad and includes such things as the pain caused by twisting an arm or pulling hair and the pain or impairment caused by administering a poison or other substance to the inside or outside of a person's body.

Aggravated assault can be committed in any of the three ways enumerated in §208(1) (A), (B), and (C). Officers should consult §2(23) for the definition of "serious bodily injury" and §2(9) for the definition of "deadly weapon."

§209 Criminal threatening
§210 Terrorizing
§211 Reckless Conduct

The offenses in §§209, 210, and 211 prohibit conduct that threatens or creates a risk of bodily injury but does not actually result in such injury. Under §209, the important thing to remember is that the person must be placed in fear of *imminent* bodily injury. "Imminent" bodily injury means injury likely to occur at any moment in the present. §209 does not apply if the person is put in fear of bodily injury which is to occur at some time in the future. §210, however, does apply to threats of future injury, but the threat must be to commit or cause to be committed a crime of *violence dangerous to human life.* A mere threat of minor physical pain would not be punishable under this section. §210 is deceptively complex, and officers are advised to break the crime into its elements in order to adequately understand it. The offense of reckless conduct (§211) is set out in simple language, and should be easily understandable.

CHAPTER 11—SEX OFFENSES

This chapter of the Code attempts to draw lines between permissible and non-permissible sexual activity. For each offense in this chapter, the lines have been drawn so that certain forms of sexual activity are prohibited only when there has been a taking advantage of or imposition on the victim. In general, the law prohibits sexual activity performed without consent or with persons who are immature, incapacitated, or otherwise overly susceptible. In reading the offenses in Chapter 11, therefore, officers should look for the type of sexual activity prohibited and the nature of the taking advantage or imposition.

§251 Definitions and general provisions

The definitions at the beginning of Chapter 11 are the basic building blocks for all the offenses contained therein. The definition of "spouse" is important because certain sexual activity with a spouse may be permissible whereas the same activity with a person not a spouse may be a serious crime. The term "spouse," however, does not include a "legally married person living apart from the actor under a defacto separation." The term "defacto separation" means simply living apart whether or not there is a court decree or legal action.

The definitions of "sexual intercourse," "sexual act," and "sexual contact" all describe sexual behavior which is lawful unless it is combined with an unwarranted taking advantage of or other imposition on another person. Officers should become thoroughly familiar with all definitions because the offenses in this chapter cannot be understood without them.

§252 Rape
§253 Gross sexual misconduct

The crime of gross sexual misconduct described in §253(1) repeats exactly the elements of the crime of rape except "sexual act" replaces "sexual intercourse." Both are Class A crimes and therefore, the law recognizes no difference in seriousness between a sexual act and sexual intercourse when performed under circumstances of imposition on another person.

Gross sexual misconduct may also be committed under less serious circumstances than those described in §253(1). Those circumstances are set out in §253(2) (A through E) and should be read carefully. The offenses described in §253(2) (A through E) are Class B and Class C crimes as explained in §253(5). Officers should note that a person may be guilty of gross sexual misconduct under §253(2) if he engages in *either sexual intercourse or a sexual act* under the circumstances enumerated.

§254 Sexual abuse of minors

In the crime of sexual abuse of minors, the required element of imposition or taking advantage is defined only in terms of the ages of the parties involved. Officers should note that there are age limits to both parties and that the offense is accomplished either through sexual intercourse or a sexual act.

§255 Unlawful sexual contact

The crime of unlawful sexual contact builds upon the definition

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of sexual contact found in §251(D). The element of imposition is composed of the five sets of circumstances set out in §255(1) (A through E), the most serious of which is (1) (C).

CHAPTER 13 —KIDNAPPING AND CRIMINAL RESTRAINT

§301 Kidnapping
§302 Criminal restraint

The definition of the crime of kidnapping uses the word "restrain" as a basic building block. "Restrain" is defined in §301(2). The definition must be read carefully, because there are many kinds of substantial restrictions on a person's movements that do not come within the meaning of "restrain." For example, if a person is removed from a telephone booth but is not moved a substantial distance or confined for a substantial period, that person is not restrained under the definition in §301(2). Therefore, even if the person were removed for one of the purposes enumerated in §301(1) (A) (1-6), there would be no offense of kidnapping.

The crime of kidnapping uses the term restrain in two different ways. §301(1) (A) prohibits the restraining of a person for the six forbidden *purposes* listed. The law enforcement officer must gather evidence on *why* the person was restrained. §301 (1) (B) prohibits the restraining of a person under the two circumstances listed. The officer must gather evidence on *how* the person was restrained. In §301 (1) (A) (4), the word "terrorize" is used in its common sense to mean "instill great fear" and does not have the technical meaning set out in §210.

Law enforcement officers should become very familiar with §301(3) which provides that kidnapping can be reduced from a Class A to a Class B crime "if the defendant voluntarily released the victim alive and not suffering from serious bodily injury, in a safe place prior to trial." An officer faced with a kidnapping situation may be able to persuade a kidnapper to release a person unharmed if the officer explains this reduction of sentence provision and informs the kidnapper that the maximum penalty for a Class A crime is 20 years but for a Class B crime is 10 years.

§302 on criminal restraint deals with unlawful restrictions of movement that are less serious than kidnapping. Criminal restraint may be committed in three different ways as set out in §302(1) (A), (B), and (C). §302(1) (A) uses the term restrain as defined in §301 as a basic building block. §302(1) (B) and (1) (C) are quite complex and should be read very carefully. Officers should note that §302(1) (B) and (1) (C) contain more than one *mens rea* requirement. Both provisions contain the phrase "knowing he has no legal right to do so." The definition of "knowing" in §10(2) (B) should be applied whereby the phrase would mean that the person must be *aware* that he has no legal right. Both §302(1) (B) and (1) (C) also contain the phrase "he intentionally or knowingly takes . . . ." The definition of knowingly in §10(2) (A) should be applied in this phrase. §302 illustrates that different definitions may be applied to the same word describing the *mens rea*, depending on whether a *result of conduct* or *attendant circumstances* are being described. (See the discussion of §5 and §10 of the Code in the January 1976 ALERT.)

CHAPTER 15—THEFT

This chapter of the Code is similar to the chapter on sex offenses in that it attempts to draw lines between permissible and nonpermissible conduct. Also, like the chapter on sex offenses, the definitions at the beginning of the chapter are the basic building blocks of all the offenses contained in the chapter. In general, the class of each theft crime depends upon the value of what is taken, but provisions relating to weapons, previous convictions, and the type of theft may also affect the class of the crime. The sentencing classifications for all theft crimes are found in §362.

§351 Consolidation
§352 Definitions

These two sections are illustrations of the Code's simplification of existing criminal law. Conduct formerly prohibited by several different statutes with many technical distinctions has been consolidated under one term—theft. Proof of the commission of any of the offenses in this chapter will support a conviction of theft, regardless of the crime charged in the complaint, information, or indictment, unless the defendant would be thereby prejudiced.

Unnecessary technicalities are also done away with in the definitions of each crime. The definitions in §352 provide a consistent, logical framework for the definition of each crime in Chapter 15. To the extent possible, confusing distinctions and technical terms are kept to a minimum. For example, the Code defines property comprehensively as "anything of value," rather than attempting to list exhaustively all things that are included under the word property. The things listed under §352(1) (A through F) are merely intended as illustrations of things of value. Officers should note that most of the theft crimes have a *mens rea* element different from the four culpable states of mind defined in §10. The *mens rea* term used in Chapter 15 is "intent to deprive," and it is defined in §352(3). The other definitions in §352 should be read carefully because they are used throughout Chapter 15.

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§353 Theft by unauthorized taking or transfer

This section encompasses many of the offenses found under the Larceny and Embezzlement chapter of existing law. Most of the theft violations will come under this section because of its broad coverage. The phrase "obtains or exercises unauthorized control" is designed to remove the technicalities of existing law by permitting conviction of theft when there is a transfer of either possession or title.

§354 Theft by deception

This section is an example of the Code making criminal types of conduct which were formerly questionable but lawful. "Deception" is defined very broadly to include not only misrepresentations as to matters of fact but also as to matters of law, value, knowledge, opinion, intention, or other state of mind. Deception also includes failing to correct a false impression, preventing a person from acquiring information, and failing to disclose certain legal claims against property. Furthermore, a person can be convicted of theft by deception even if the person deceived is gullible, foolish, or unreasonable. The overall effect of this section is to put merchants, dealers, and sellers of all kinds on notice to be truthful and straightforward in their commercial dealings or suffer possible criminal penalties.

Law enforcement officers investigating possible violations of this section should carefully gather evidence of all the circumstances surrounding a questioned transaction, especially the exact language of any conversations. Officers should also be aware that under §354(2) (A and B), *two mens rea* elements must be proved. The prosecution must prove both that the alleged thief *intentionally* created, reinforced, or failed to correct an impression which was false and which that person *did not believe to be true.*

§355 Theft by extortion

Theft by extortion differs from theft by deception in that the property passes from one person to another because of threat rather than deception. The basic building blocks of the crime are the definitions in §352. The types of threats which make up the offense are threats of "physical harm in the future to the person threatened or to any other person or to property at any time" or other substantial threats of a more general nature as set out in §355(2) (B). Officers should note that this section does not deal with *imminent* threats of bodily injury which are dealt with in §209 (Criminal threatening) and §652 (Robbery). Also, §355 requires that the defendant obtain property, whereas existing law has no such requirement.

§355(2) (B) prohibits a person from threatening to "do any other act which would not in itself *substantially benefit* [*the person*]. . . ." The italicized words mean simply that a person who threatens to join a union, go on strike, change jobs, or the like would not be penalized because those types of activities could substantially benefit him.

Finally, under §355, it is important to remember that the theft must occur as a *result* of the threat and not for some other reason. Also, it makes no difference whether the threats are true or false or whether the victim is especially sensitive.

§356 Theft of lost, mislaid, or mistakenly delivered property

The basic building blocks of this section are again the definitions in §352. Officers should be aware that this crime has two *mens rea* elements. One is the familiar "intent to deprive," and the other is that the person who obtains or exercises control over property must *know* that the property is lost, mislaid, or mistakenly delivered. Also, in order to prove that a person failed to take reasonable measures to return property to its owner, the officer may have to gather information on the amount of time the person kept the property, the opportunities he had to return it, and other facts bearing on this issue.

§357 Theft of services

§357(1) is written very broadly and applies to the theft of services many of the same considerations that have been discussed under the various types of theft of property. The definitions of "services" in §357(3) is also intended to be very broad and is not limited to the items listed.

§358 Theft by misapplication of property

Law enforcement officers will have little occasion to investigate violations of this section because the complexity of the crime would generally require the expertise of an accountant or other special investigator.

§359 Receiving stolen property

This section of Chapter 15 is very important to law enforcement officers. The language of the section is straight-forward and easily understandable, but officers should take careful note of the *mens rea* elements. One *mens rea* element is the familiar "intent to deprive." The other is either "knowing that it has been stolen" or "believing that it has probably been stolen." Officers must carefully gather evidence on all circumstances that might put a suspected person on notice of the possible stolen nature of property he has received, retained, or disposed of.

§360 Unauthorized use of property

§360 covers offenses like "joyriding" and other unauthorized uses of vehicles and other property. The section should be self-explanatory.

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§361 Claim of right; presumptions

§361 is primarily of interest to attorneys and judges. §361(2) and (3), however, may affect law enforcement officers. §361(2) provides officers with an opportunity to greatly assist in the prosecution of violations of Chapter 15 or Chapter 27. If an officer gathers evidence sufficient to establish that a defendant was in exclusive possession of property recently taken by theft or robbery, the defendant will be presumed guilty of the theft or robbery. Officers therefore should keep records of the time of the theft or robbery and the time when the defendant was apprehended with the property. Likewise, officers should gather evidence on any indications of concealment of property as described in §361(3) because of the presumption of intent to deprive available under that sub-section. §361(3) should aid in the prosecution of shoplifters.

§362 Classification of theft offenses

The classification of theft offenses has already been discussed at the beginning of the discussion of this chapter. Officers should be aware of the different classifications because the classification of the crime affects the officer's power to arrest. As stated in the January 1976 issue of ALERT, amendments to the Code are being prepared to the effect that for purposes of arrest Class A, B, and C crimes will be treated the same as felonies under existing law and Class D and E crimes the same as misdemeanors under existing law.

CHAPTER 17—BURGLARY AND CRIMINAL TRESPASS

§401 Burglary
§402 Criminal Trespass
§403 Possession of burglar's tools
§404 Trespass by motor vehicle

The crimes in this chapter are defined in a straightforward manner and are easy to understand. The sentencing classifications under §401 and §402 depend on a variety of circumstances and should be read carefully. Officers should note that §401 Burglary requires no "breaking" as does the existing crime of Burglary in 17 M.R.S.A. §751. Also, under §402 Criminal trespass, a person may be criminally liable if, after lawfully entering a place, he unlawfully remains there. A person would not be criminally liable for this conduct under existing law.

CHAPTER 19—FALSIFICATION IN OFFICIAL MATTERS

Chapter 19 is intended to insure that governmental decisions will be based upon reliable and accurate information. The underlying theory is that if government officials receive false, misleading, or inaccurate information, their ability to render fair and just decisions will be impaired substantially. Generally, Chapter 19 covers two distinct sources of information: spoken or written information (§§451-454) and physical evidence (§§455 and 456). The final section, §457, attempts to assure that citizens will not be misled by people claiming to be public servants acting in an official capacity when they are not.

§451 Perjury

Perjury is one of the most serious forms of falsification and the new Code continues the harsh penalties historically provided for its commission by making it a Class C crime. Two essential elements of perjury are "official proceeding" and "material statement" (defined in §451(5) (A) and (B) respectively). These definitions must be read closely to fully appreciate the broad scope of §451.

A *mens rea* requirement different from those defined in §10 is found in this section: that the actor *does not believe the statement to be true.* This *mens rea* requirement is necessary because the gist of the crime is presenting under oath a false statement to be true. If the actor does not believe a statement to be true, he should not present it as true and attempt to hide behind a defense that he did not know that the statement was false.

§452 False swearing

The crime of false swearing requires the same *mens rea* requirement found in the crime of perjury and discussed above. False swearing differs from perjury in that the false statement need not be material and may be committed outside of an official proceeding.

Under this section and §451, false statements must be proven by more than a single witness. All law enforcement officers need to prove falsity is either another witness or some corroborating circumstances.

§453 Unsworn falsification

Under this section, there is no requirement that an oath or affirmation be given, that the written statement be material, or that an official proceeding be involved. False written statements on forms bearing notification that false statements are punishable are covered by this section. A good example of this is state tax returns. Also, making a false written statement intending to deceive a public official in the performance of his duties violates this section. This section, however cannot be violated by a suspect in the custody of law enforcement officers. Thus, a false written confession by a suspect in custody does not constitute a crime under this section.

§454 Tampering with witness or informant

§454 provides criminal penalties for persons attempting to influence an official proceeding by attempting to induce a witness or informant to testify or inform falsely, to withhold information or evidence, or absent himself when he

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has been summoned by legal process. Under existing Maine law, this is referred to as subornation of perjury. (17 M.R.S.A. §3002). Paragraphs B and C cover the witness or informant who solicits, accepts, or agrees to accept any benefit for doing any of the prohibited conduct found in §454 (1) (A).

§455 Falsifying physical evidence
§456 Tampering with public records or information

§455 prohibits falsifying physical evidence. Under §455, all methods of falsification of physical evidence relevant to an official proceeding or criminal investigation are prohibited if accompanied by the appropriate *mens rea.* §456 similarly protects the integrity of records, documents, or other things kept by the government or required to be kept by law. §§455 and 456 prohibit, among other things, presenting as true any record, document, or other thing, knowing it to be false, with an intent to deceive another.

§457 Impersonating a public servant

Finally, §457 attempts to insure that no person will present himself as a public servant if he is not. To be guilty, a person must engage in some conduct related to the duties of the impersonated public servant with the intent to deceive anyone.

CHAPTER 21—OFFENSES AGAINST PUBLIC ORDER

Chapter 21 contains a variety of offenses which pose a threat to the peace and tranquility of the community. §§501-504 regulate conduct which directly threatens public order. §501 (Disorderly conduct) is the cornerstone of §§501-504 in that those sections depend upon it for their definitions. This is another example of piggybacking.

§501 Disorderly conduct

§501 spells out what conduct amounts to disorderly conduct in a public place (§501(1)), in either a public or private place (§501(2)), or only in a private place (§501 (3)). As a precondition to a violation of §501(3), a law enforcement officer must have ordered the person to cease such noise. §501(4) specifically allows a law enforcement officer to make arrests without a warrant for violations of this section committed in his presence. "Public place" and "private place" are defined in §501 (5). These definitions should be read carefully because §501(1), (2), and (3) incorporate these definitions.

As mentioned previously, law enforcement officers should become thoroughly familiar with the crime of disorderly conduct since §§502-504 contain disorderly conduct as a necessary element.

§502 Failure to disperse
§503 Riot
§504 Unlawful assembly

These three sections are intended to assist law enforcement officers in crowd control. Each section requires the presence of at least six people before they are applicable and each section piggybacks with either disorderly conduct or riot. As a precondition to a violation of §502 and §504, a law enforcement officer must have ordered the participants to disperse. Notice also in §502 that persons not participating in the disorderly conduct but who are in the immediate vicinity are nonetheless required to disperse upon an order by a law enforcement officer, although failing to do so subjects these persons to a lesser penalty—a Class E rather than a Class D penalty.

§505 Obstructing a public way

If the obstruction of the public way is unreasonable, a violation of this sections occurs only after a law enforcement officer has lawfully ordered the person to cease such an obstruction and the person fails to comply. Minor obstructions are not unreasonable and therefore do not violate this section. Officers should note the broad definition given "public way" in §505(2).

§506 Harassment
§507 Desecration and defacement

§§506 and 507 should be read carefully because these are crimes with which law enforcement officers are commonly confronted. §506 deals with the troublesome problem of harassment by means of a telephone. §507 covers the defacement or desecration of structures or any place of worship or burial. The definition of desecrate is found in §507(2) and is very broad.

§508 Abuse of corpse
§509 False public alarm or report

§509 assures that public services will not be depleted needlessly by false alarms or reports. Of particular interest is one of the *mens rea* provisions found in §509(1)(B), which requires only that the person giving the information knows that he has no information relating to the report he gave. This provision will significantly assist the state in successfully prosecuting this crime.

§510 Cruelty to animals
§511 Violation of privacy
§512 Failure to report treatment of gunshot wound
§513 Maintaining an unprotected well
§514 Abandoning an airtight container
§515 Unlawful prize fighting
§516 Champerty

§§510-516 collect a wide range of prohibited conduct, loosely related in that the prohibited conduct offends public sensibilities or

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presents a particular danger to the community.

§512 requires licensed physicians to report to law enforcement officers within 24 hours any treatment they render for a gunshot wound. This section is narrower than existing law which requires any person who professionally treats a gunshot wound to make such a report.

CHAPTER 23—OFFENSES AGAINST THE FAMILY

§551 Bigamy
§552 Nonsupport of dependents
§553 Abandonment of child
§554 Endangering the welfare of a child
§555 Endangering welfare of an incompetent person
§556 Incest
§557 Other defenses

Law enforcement officers are commonly involved in domestic problems. The offenses collected in this chapter cover a wide range of conduct involving children, dependents and other members of the family. Law enforcement officers are therefore urged to read this chapter carefully since its provisions may help in resolving a variety of domestic problems they may encounter.

Among the prohibitions contained in §554 is a provision relating to the selling, furnishing, giving away, or offering to a child under the age of 16, intoxicating liquor, cigarettes, tobacco, air rifles, firearms, or ammunition. Also, the general prohibition contained in the last sentence of §554(1) includes the mental welfare of the child.

§555 is not found in the present Maine statutes. It complements §554 relating to endangering the welfare of children.

CHAPTER 25—BRIBERY AND CORRUPT PRACTICES

This chapter is designed to protect the integrity of government function by prohibiting conduct which exposes official decision-making to improper influences. The sections within this chapter have substantially the same format: one subsection deals with the promising, offering, or giving of the prohibited inducement, and another subsection prohibits the soliciting, accepting, or agreeing to accept the unlawful inducement. Some sections also contain a requirement that violations be reported to law enforcement officers.

The term public servant is frequently used throughout Chapter 25. A close reading of the definitions found in §2(21), §2(13) and §2(17) reveals that law enforcement officers are public servants. Law enforcement officers should keep this in mind when reading sections which include public servants.

§601 Scope of chapter
§602 Bribery in official and political matters

§602 is very broad. For example, motorists offering law enforcement officers money with the intent to persuade the officer not to issue a citation for a traffic infraction are in violation of this section.

§602 (1) (B) contains a provision making it a violation not to report to a law enforcement officer an offer or promise made in violation of §602(1)(A). When a law enforcement officer has been offered or promised a pecuniary benefit in violation of §602(1)(A) he must report the violation to another law enforcement officer through normal channels. A law enforcement officer who fails to make such a report violates this section.

The definition of pecuniary benefit found in §602(1)(C) is also very broad because it covers anything " . . . the primary significance of which is economic gain . . ."

§603 Improper influence

Under this section, it is a crime for a person to threaten a law enforcement officer or other public servant with the purpose of influencing his action. As with bribery, it is a violation of this section if a law enforcement officer fails to notify another law enforcement officer of a violation of this section.

§604 Improper compensation for past services

§604 requires that law enforcement officers and other public servants accept no property or other pecuniary reward for any action already taken relating to their official duties.

§605 Improper gifts to public servants

This section effectively prohibits law enforcement officers from receiving gifts from persons who have an interest in an official matter that the law enforcement officer is involved in.

§606 Improper compensation for services
§607 Purchase of public office

Among other things, §607 attempts to insure that appointment or advancement of law enforcement officers is based on merit.

§608 Official oppression

This section forbids law enforcement officers acting in that capacity from knowingly performing an unauthorized act or failing to perform a legal duty. Because law enforcement requires a great deal of discretion, this section does not criminalize mere accidents.

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§609 Misuse of information

§609 is new to Maine law. If a law enforcement officer receives information in the course of his employment, this section prohibits him from securing or assisting another in securing a pecuniary gain by acting on that information. In the business world, this is called acting on inside information and would commonly occur in the public sector when a public servant learns of a decision by an agency to buy some land and then he goes out and buys the land himself.

CHAPTER 27—ROBBERY

Chapter 27 contains two sections that piggyback. §651 piggybacks with §652. Both §651 and §652 piggyback with theft. In order to have aggravated robbery, robbery must be present. Therefore, robbery, which is found in §652, will be discussed first, followed by aggravated robbery.

§652 Robbery

There are three ways to commit robbery and each way requires theft as a necessary element. Theft, which is discussed in Chapter 15 of the Code, can be committed in many ways, and, for the purposes of robbery, any form of theft satisfies this element of robbery.

The definition of robbery in §652 is essentially the same as the old robbery law found in 17 M.R.S.A. §3401, which requires stealing plus some form of force or threat. The imprisonment penalty for robbery found in §652 is limited to a maximum of 10 years, whereas, under the existing law it is any term of years.

§651 Aggravated robbery

As mentioned previously, aggravated robbery piggy-backs with robbery by requiring that any of three circumstances occur during the course of committing a robbery. One of the three circumstances is that the actor be armed with a dangerous weapon. Armed, which is defined in §2(3-A), does not require that the dangerous weapon be visible, or that it be used.

CHAPTER 29—FORGERY AND RELATED OFFENSES

§701 Definitions
§702 Aggravated forgery
§703 Forgery
§704 Possession of forgery devices

These four sections attempt to consolidate and simplify many of the forgery and counterfeiting offenses presently found in Title 17, §§1501, 1502, 1504-1508, 1629, and in Title 22, §2371. §701 contains the definitions of terms used in §§702 and 703 to define forgery and aggravated forgery. Basically, §701(1), (2), and (3) describe respectively the unlawful altering of an existing written instrument, the unlawful completion of an incomplete written instrument, and the unlawful creation of a written instrument. The term "written instrument" is broadly defined in §701 (4) and a common example would be a check. The term "utter" is used throughout this chapter but is not defined in the Code. "Utter" is a legal term of art and simply means the giving or passing of a written instrument to another with the representation that the instrument is genuine.

§703 provides for five different ways to commit an act of forgery which, when coupled with the intent to defraud or deceive, constitutes the offense of forgery. §702 contains the basic elements of forgery found in §703 but requires additionally that the instrument be one enumerated in paragraphs A-E of §702(1). Because these instruments are considered important, the penalty of a Class B offense attaches, as opposed to the lighter Class D penalty found in forgery.

§704 prohibits the possession of forgery devices and is unique in that §704(1) (A) requires only that a person know that the character of the device he makes or possesses can be used in committing forgery or aggravated forgery. Under §704 (1) (A), no intent to use the device need be proven. On the other hand, §704 (1) (B) requires possession and an intent to use the device to commit forgery or aggravated forgery, but the device need not be specifically designed or adapted for such use. Thus, possession of a pen with the requisite intent violates §704 (1) (B).

§705 Criminal simulation

Criminal simulation is a new crime to Maine and can be described best as presenting imitations as the real thing. Just as §§701-703 prohibit forgeries of written instruments, §705 prohibits forgery of other things, such as the written pedigree of any animal (§705(1)(C)) or a term paper for another in satisfaction of a course at a university (§705(1)(B)(1)).

§706 Suppressing recordable instrument
§707 Falsifying private records

These two sections are also new to Maine law and would rarely be of interest to law enforcement officers. §706 forbids people from tampering with recordable instruments, such as deeds, wills, and mortgages. §707 simply prohibits tampering with business records if the person, by such tampering, intended to defraud anyone. Mere accidents are not punishable.

§708 Negotiating a worthless instrument

This section incorporates definitions found in Title 11, which is commonly know as the Uniform Commercial Code. Like the old 17 M.R.S.A. §§1605-1607, this section criminalizes the passing of bad checks and other worthless negotiable instruments when the person knows that the bank will not pay

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them. The term negotiable instrument includes not only checks, but notes, bills of exchange and certificates of deposit. Of particular importance is that no property need be exchanged for the negotiable instrument before the crime is committed. A negotiable instrument, like a check, is negotiated when it is properly endorsed and delivered.

CHAPTER 31—OFFENSES AGAINST PUBLIC ADMINISTRATION

§751 Obstructing government administration

§751 replaces those portions of 17 M.R.S.A. §§2952-2954 which deal with interference and obstruction of certain officials performing official functions. §751 goes further, however, by expanding the protected class of officials to public servants (defined in §221)) and providing a uniform penalty. Law enforcement officers will have occasion to use this section and several aspects deserve mention. If a person engages in a criminal act with an intent to interfere with a public servant performing an official function, the person can be charged with a violation for the criminal act and a violation under this section. §751(2) specifically carves out an exception to this rule if the act is a refusal to submit to an arrest or is an escape.

§752 Assault on an officer

This section will be familiar to law enforcement officers who had occasion to use 17 M.R.S.A. §2952 (Assault or interference with officer; jurisdiction). §752 piggybacks with §207 (Assault) but does not provide any greater penalty. If the assault amounts to an Aggravated assault (§208), the person should be charged under that section.

§753 Hindering apprehension or prosecution

§753 expands existing Maine law relating to an accessory after the fact by enumerating in §753(1)(A-F) conduct which, when coupled with the requisite *mens rea* constitutes a violation of this section. This section also contains a sliding penalty scale linked to the offense with which the principal is charged. Several provisions contained in this section parallel other provisions of the Code: §753(1) (C) with §455 (Falsifying physical evidence) and §753 (1) (E) with §454 (Tampering with witness or informant), §209 (Criminal threatening), §210 (Terrorizing), §751 (Obstructing government administration), and §752 (Assault on an officer). Notice also that §751 (1)(F) covers the "fence" who assists in the reselling of stolen goods.

§754 Compounding

This section will be of assistance to law enforcement officers who are interviewing potential witnesses that may be withholding information in consideration for some pecuniary benefit. §754 (2) provides an exemption for qualified persons or institutions treating drug users, and law enforcment officers should read it carefully.

§755 Escape

This section simplifies the law of escape in Maine. A defense is provided in §755(2) if the arresting officer acted unlawfully in making the arrest. This provision, in effect, allows a person to flee nonviolently from an unlawful arrest without risking criminal sanctions.

§756 Aiding escape
§757 Trafficking in prison contraband

§757 incorporates the definition of contraband found in §756(2).

CHAPTER 33—ARSON AND OTHER PROPERTY DESTRUCTION

Chapter 33 collects crimes which threaten or destroy property or which endanger the lives of people. Several of the crimes found in this chapter are perhaps the most serious found in the criminal law because the criminal act endangers the lives of a large number of people.

§801 Aggravated arson
§802 Arson

These two sections are a vast improvement over the confusing and sometimes impossible to apply 17 M.R.S.A. §§161-167 (Arson). §§801 and 802 are not piggy-back sections. §801 deals with fires or explosions intentionally started, caused, or maintained that damage structures (defined in §801(4)), provided there was a conscious disregard of risk of injury or death to another person. Critical to the offense of aggravated arson is the definition of "structure." Structure is defined very broadly in §801(4) and includes but is not limited to any place adapted for overnight accommodation. §801(2), by not allowing the defense that a person was not in fact in the structure, highlights the Code's intent of not letting mere chance diminish the penalty for otherwise life-risking conduct.

§802(1) (A) and (1) (B) (1) deal with fires or explosions started, caused or maintained with the intent to damage or destroy property of another or to allow the collection of insurance proceeds. §802(1) (B) (2) prohibits fires or explosions created in a reckless disregard of life or property. For example, burning leaves on a windy day near the home of another, thereby disregarding the likelihood that the fire will spread to the other's home, violates §802(1)(B)(2).

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§803 Causing a catastrophe

This is a new offense to Maine law and is designed to cover those rare but possible reckless acts which cause widespread death or serious bodily injury to 10 or more people or substantial damage to five or more structures. The definition of catastrophe is found in §803(2) and incorporates the definition of structure previously discussed in §801. Causing a catastrophe is a Class A offense.

§804 Failure to control or report a dangerous fire

In §804, an affirmative duty is placed on persons who are in a position to minimize the danger caused by fire to warn the endangered people, to give a prompt fire alarm, or to take steps to put out the fire. Criminal penalties for failing to take affirmative action are rare in the criminal law.

§805 Aggravated criminal mischief
§806 Criminal mischief

These two sections consolidate no less than 25 penal provisions found in Title 17.

§805(1)(A-D) sets out 4 different ways of committing aggravated criminal mischief. Paragraphs A and B establish a minimum dollar value of the property damaged or destroyed of $1,000. Paragraph C is of particular interest to law enforcement officers since it deals with acts against the property of law enforcement and other public agencies which substantially interrupt the service to the public.

Criminal mischief, found in §806, can be committed in three ways and involves conduct less serious in nature. It therefore carries a less severe penalty than aggravated criminal mischief.

CHAPTER 35—PROSTITUTION AND PUBLIC INDECENCY

§851 Definitions
§852 Aggravated promotion of prostitution
§853 Promotion of prostitution
§853-A Engaging in prostitution

§§851-853-A are best read as a group. The definitions found in §851 are used as building blocks for crimes found in §§852-853-A. For example, §§852 and 853 incorporate the definition of "promotion of prostitution" found in §851(2). §853-A, which criminalizes engaging in prostitution, was added by the Legislature to the original Code after heated debate. The interesting feature about §853-A is that there can only be a fine imposed as a penalty. The imprisonment provisions of a Class E crime are specifically excluded. This fine only penalty for a criminal offense does not appear in any other part of the Code.

§854 Public indecency

§854 lists three methods of committing the offense of public indecency. §854(1) incorporates the definitions of sexual intercourse and sexual act found in §251 and those definitions should be read in conjunction with this section.

CHAPTER 37—FRAUD

The provisions of Chapter 37 bear close relationship to two other Code chapters dealing with dishonest practices designed to obtain a pecuniary benefit or other advantage—Chapter 15 (Theft) and Chapter 25 (Bribery and Corruption). For the most part, the prohibitions of Chapter 37 deal with fraudulent practices undertaken with respect to persons who stand in a relationship of trust to one another.

§901 Deceptive business practices

This section is designed to prohibit unfairness and cheating in business transactions, especially in those situations in which one party relies on the representations of another party regarding the quality or quantity of a particular item. Thus, for example, §901(1) (B) would protect the consumer against the merchant who charges for a greater amount of goods than is actually provided, and §901(1) (D) would protect the consumer against the merchant who, by switching labels on the items he sells, represents to the consumer that those items are of a higher quality than in fact they are.

It is important to note that §901 applies only to persons who perform the proscribed conduct in the course of engaging in a business, occupation or profession. Thus, a person who is not engaged in the business of selling firewood and who offers to sell a cord of wood to another person for a certain sum but intentionally delivers less than a cord, would not be punishable under §901(1) (B). However, individuals who engage in such fraudulent practices may be punishable under other statutes. Thus, a person not in the business of selling used cars who intentionally offers for sale an automobile the odometer of which has been turned back is not punishable under §901(1) (E) but is punishable under 17 M.R.S.A. §1609-A.

In establishing that a person committed any of the offenses enumerated in §901(1), the state, with one exception, does not have to establish that any property was transferred or that the offending party realized pecuniary gain. The one exception to this statement is found in §901(1) (C), which penalizes the businessman who in fact takes, under circumstances where he furnishes the weight or measure, a greater quantity of goods or services than was agreed upon. In such cases the state must show that the purchaser received the additional goods or services.

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§902 Defrauding a creditor
§903 Misuse of entrusted property

These two offenses involve specialized investigation and therefore will not be discussed here. It should be pointed out that §902 penalizes the debtor who takes or destroys property in which a third person has a security interest and §903 penalizes the fiduciary who deals with, but does not permanently take, property which has been entrusted to him and thereby creates a serious risk of loss of the property.

§904 Private bribery

This section should be read in conjunction with the provisions of Chapter 25 which relate to the bribery of public officials. §904 penalizes a person who gives a pecuniary benefit to a second person who stands in a close relationship with a third person or entity in an attempt to have the second person act, or fail to act, in a manner detrimental to the interests of the third person or entity. Additionally, §904(1) (B) punishes the person who solicits, accepts or agrees to accept the benefit offered by the person who violates §904(1) (A). Thus, the employee who accepts money to act against the interests of his employer and the participant in a sports contest who accepts a bribe to throw a game are punishable under §904(1) (B).

§905 Misuse of credit identification

With the increased use of credit cards as a means of payment for goods and services, §905 should play an increasingly important role in law enforcement. This provision is not new to Maine law, but consolidates numerous provisions of existing law relating to the misuse of credit identification. It is important to note that the defendant need not actually obtain property or services to be punishable under this section. It is enough, for example, that he requests property or a service and presents as payment a credit card which he knows is stolen or a billing number which he is not authorized to use.

§906 Use of slugs

§906 has no precise counterpart in existing law. Its prohibitions extend to virtually every type of coin-activated machine or device which will provide, or provide access to, goods or services.

CHAPTER 39—GAMBLING

§951 Inapplicability of chapter
§952 Definitions
§953 Aggravated unlawful gambling
§954 Unlawful gambling
§955 Possession of gambling records
§956 Possession of gambling devices
§957 Out-of-state gambling
§958 Injunctions; recovery of payments

Chapter 39 reflects a new approach toward gambling in Maine. Under existing Maine law, *any* form of gambling or betting which is not licensed or otherwise expressly authorized by statute constitutes a criminal offense. Thus, "social gambling" (for example, the private poker game or the office World Series pool) is presently criminal activity, although the statutes prohibiting this type of conduct are rarely, if ever, enforced.

Chapter 39 recognizes that social gambling has become an accepted form of behavior and carves out of the criminal gambling law an exception for social gambling. So long as persons are "players," as that term is defined by §952(8), and so long as they are engaging in "social gambling," as that term is defined by §952(8), their gambling activity will be lawful. It should be noted that Chapter 39 places no age limitations upon the social gambling exception. Therefore, juveniles may lawfully engage in social gambling.

In decriminalizing social gambling, the new gambling laws shift their focus completely to promoters of gambling activity, that is, those persons who seek to profit from the gambling of others. The four penalty provisions of Chapter 39 apply only to persons promoting gambling activity. §594 defines the basic gambling offense and relies almost entirely on the definitions of "advance gambling activity" and "profit from gambling activity" found in §952(1) and (9). These two definitions are, in turn, built upon the definitions of "contest of chance," gambling," and "something of value." In order to understand fully the scope of §954, which perhaps will be Maine's most common gambling offense, officers should have a thorough familiarity with each of these definitions.

While §§953 and 954 create penalties for the actual operation of unlawful gambling schemes, §§955 and 956 establish penalties for the possession of implements necessary to operate such schemes—the gambling records and the gambling machines or devices used in professional gambling. Officers should note, however, that after April 1, 1976 it will no longer be criminal for one to possess a slot machine, or other device commonly used for gambling, when the device is not being used for unlawful gambling purposes. It will not be enough, therefore, to show that a person possessed, for example, a slot machine. The officer will also have to gather evidence to show that the machine was used for unlawful gambling or that the defendant knew it would be so used. Here it should be noted that Chapter 39, unlike existing law, does *not* provide for the confiscation and destruction of gambling devices. However, such devices

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may still be seized, subject to Fourth Amendment requirements, as the instrumentality of a crime or as non-testimonial evidence which would aid in a particular apprehension or conviction.

Finally, officers should remember that Chaper 39 prohibits only gambling activity which is not authorized by statute. Thus, beano and games of chance licensed by the state police are exempt from the prohibitions of Chapter 39. Officers who wish to ascertain whether a particular gambling scheme is being operated pursuant to the licensing laws should contact the Games of Chance Division, State Police Headquarters, Augusta, Maine 04330 (289-3028).

CHAPTER 41—CRIMINAL USE OF EXPLOSIVES AND RELATED CRIMES

§1001 Criminal use of explosives
§1002 Criminal use of disabling chemicals
§1003 Criminal use of noxious substance

Chapter 41 establishes penalties for the unlawful use of explosives and other harmful or offensive substances. The section relating to explosives (§1001) is, for the most part, a continuation of existing law, while the prohibitions contained in §§1002 and 1003 are new to Maine law.

Law enforcement officers should be aware of several changes in Maine's law relating to explosives. First, unlike present law, §1001 defines the term "explosives" and therefore should give the officer a much better idea of the type of material falling within the scope of the statute's proscriptions. Second, in defining the conduct which constitutes "criminal use of explosives," §1001(1)(B) and (C) refer to violations of both the regulations relating to explosives adopted by the Commissioner of Public Safety and local ordinances regulating explosives. Consequently, officers will have to become familiar with both local and state regulations governing use of explosives in order to understand completely the scope of §1001. (Copies of the state regulations governing explosives may be obtained from the State Fire Marshal, Department of Public Safety, Augusta, Maine 04330.) (289-2481)

§1002 was designed to establish criminal penalties for the use of mace and similar chemical substances which, in recent years, have been increasingly employed by criminal offenders as an alternative to firearms, the use of which would result in more serious penalties. Under §1002 a person who uses a disabling chemical upon another person is guilty of a Class D crime. However, two important exceptions to this general prohibition should be noted. First, pursuant to §101(3), a law enforcement officer may use mace upon another person in those instances in which, under §107, the officer is justified in using either non-deadly or deadly force. Second, pursuant to §1002(3), any person may use mace or another disabling chemical for the purpose of self-defense.

§1003 makes criminal the placing of a stink bomb, or other device capable of releasing offensive odors, in *private* places, such as in a person's dwelling or automobile. This section should be read in conjunction with §501(1)(B), which prohibits the activation of stink bombs in public places.

CHAPTER 43—WEAPONS

§1051 Possession of machine gun
§1052 Right to possess, carry or transport machine gun
§1053 Confiscation and seizure of machine gun
§1054 Forfeiture of machine gun
§1055 Trafficking in dangerous knives

The provisions of Chapter 43 relating to the possession of machine guns and dangerous knives are the same as those of existing law with two exceptions. First, §§1051(1) and 1055, which establish the offenses of possession of a machine gun and trafficking in dangerous knives, require that a person possess such weapons "knowingly." Existing law does not require the state to prove a particular state of mind. Second, the maximum penalty for possession of a machine gun has been reduced from 5 years imprisonment or a fine of $1,000, or both, under existing law, to a period of imprisonment of less than one year or a fine of not more than $500, or both, under the Code. This means that a law enforcement officer will no longer be able to make a warrantless arrest of a person who unlawfully possesses a machine gun when the offense does not occur in the officer's presence. Other than these two changes, Maine's criminal statutes regarding machine guns and "switchblade" or "gravity" knives remain unchanged.

CHAPTER 45—DRUGS

All of Maine's statutes regulating drugs are presently found in Title 22 of the Revised Statutes. However, in keeping with the Code's policy of collecting all serious crimes into Title 17-A, the drafters of the Code have relocated all *criminal* drug offenses in Chapter 45 of Title 17-A. Nonetheless, Title 22 will retain two important types of drug statutes. First, statutes which authorize certain types of individuals (e.g., doctors and pharmacists) to use and possess drugs will remain in Title 22. These grants of permission are very important in applying the criminal prohibitions of Chapter 45. Each of the Code drug offenses penalizing the trafficking, furnishing or possession of scheduled drugs or hypodermic apparatuses contains an exception for persons expressly authorized to use drugs

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by Title 22. Second, although Title 17-A will contain all of the criminal drug-related offenses, Title 22 will retain several sections which prohibit defined conduct. However, violations of these offenses will be civil rather than criminal offenses. In light of the continued significance of the Title 22 drug provisions, and their role in the enforcement of Chapter 45 of the Code, officers are urged to review sections 27-54 of PL 1975, c. 499 (the Act creating the Criminal Code and to consider the changes which have been made in Title 22. (Sections 27-54 can be found on pages 210-216 of Title 17-A.)

§1101 Definitions

Like other chapters of the Code, Chapter 45 relies upon a comprehensive definitional section which makes it possible to define the substantive drug offenses in a concise and straightforward way. For the law enforcement officer, the key definitions in this section are "traffick" (§1101 (17)) and "furnish" (§1101 (18)). The basic offenses in Chapter 45 involve either "trafficking" or "furnishing" and therefore rely heavily on these definitions. Trafficking is the more serious offense and, under §1101 (17)(C and D), involves drug-related activity designed to make a profit. Thus, trafficking includes both distribution for consideration *and* manufacture or cultivation. Furnishing, on the other hand, involves the mere giving of a scheduled drug to another and does not require a showing that the person giving the drug received any consideration.

§1102 Schedules W, X, Y and Z

§1102 assigns all controlled drugs to four different groups: schedules W,X,Y and Z. These schedules help establish the severity of the penalty for a particular drug offense. For example, penalties relating to a "trafficking" offense are most severe when a schedule W drug is involved and least severe when a schedule Y or schedule Z drug is involved. The severity of a penalty will, therefore, generally depend upon two factors: (1) whether the offense involves trafficking, furnishing, or possession, and (2) the schedule of the drug involved.

§1103 Unlawful trafficking in scheduled drugs
§1104 Trafficking in or furnishing counterfeit drugs
§1105 Aggravated trafficking or furnishing scheduled drugs

§1103 defines the basic crime of unlawful trafficking in scheduled drugs. The key to the offense is the definition of trafficking found in §1101(17). It should be noted that a person is guilty of unlawful trafficking only when the substance involved is, *in fact,* a scheduled drug. Thus, if a person unlawfully sells to another a substance which is not a scheduled drug (and which is not a counterfeit drug under §1104), the person is not guilty of unlawful trafficking even though he believed the substance to be a scheduled drug.

§1104 penalizes a person who either trafficks in or furnishes a lethal substance, or a substance capable of causing serious bodily injury, which he claims is a scheduled drug, but which, in fact, is not a scheduled drug. Existing law likewise contains a provision relating to the distribution of counterfeit drugs. However, the present statute, 22 M.R.S.A. §2388 (repealed by PL 1975, c. 499) penalizes distribution of *all* counterfeit substances. §1104 applies only when the substance represented to be a scheduled drug is capable of causing death or serious bodily injury.

§1105 establishes more serious penalties for trafficking with or furnishing to a child under 16 a scheduled drug. In such cases the defendant would be subject to a penalty one sentencing class higher than if he had trafficked with or furnished to a person 16 or older.

§1106 Unlawfully furnishing scheduled drugs
§1107 Unlawful possession of schedule W,X and Y drugs

§1106 defines the offense of unlawfully furnishing scheduled drugs and relies upon the definition of "furnishing" found in §1101(18). As that definition indicates, to be guilty of unlawful furnishing one need not receive any payment for the scheduled drug delivered. The mere transfer to another is sufficient.

§1106(3) creates a presumption that a person is unlawfully furnishing if the person possesses more than 1½ ounces of marijuana. Possession of 1½ ounces or less of marijuana will not be a crime but will be a civil violation pursuant to 22 M.R.S.A. §2383 unless the state can prove that the person possessing less than 1½ ounces of marijuana possessed it with intent to furnish. (Problems dealing with possession of marijuana and other civil violations will be discussed in a future issue of ALERT.)

§1107 punishes possession of schedule W, X, and Y drugs. Mere possession of schedule Z drugs is not a criminal offense. It should be noted that the Criminal Code abolishes crimes involving being in the presence of drugs or being under the influence of drugs.

§1108 Acquiring drugs by deception
§1109 Stealing drugs
§1110 Trafficking in hypodermic apparatuses
§1111 Possession of hypodermic apparatuses

§§1108 and 1109 penalize the acquisition of drugs by deception or theft and make such conduct a class D crime regardless of the schedule of the drug. §§1110 and 1111 penalize the unlawful trafficking, furnishing or possessing of "hypodermic apparatuses," a term

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defined by §1101(2). It should be noted that the penalty provision was inadvertently omitted from §1111. A penalty will be added by the legislature at its current Special Session.

§1112 Analysis of scheduled drugs
§1113 Arrest without warrant by police officer for drug crimes; inspection
§1114 Schedule Z drugs; contraband subject to seizure
§1115 Notice of conviction

§1113(1) authorizes law enforcement officers to arrest upon probable cause persons believed to have committed or be committing any violation of Chapter 45, even though the offense is not committed in the officer's presence. §1114 is also designed to aid in the enforcement of the Code drug provisions and declares that all schedule Z drugs possessed without authority are contraband and therefore subject to seizure. Thus, if a person possesses a usable amount of marijuana, an officer may not arrest the person for the civil violation, but he may seize the marijuana subject to Fourth Amendment requirements.

PART THREE

PUNISHMENTS

CHAPTER 47—GENERAL SENTENCING PROVISIONS

Chapter 47 introduces the other Code chapters relating to sentencing. Unlike Chapters 49, 51 and 53, which deal with particular types of sentences (e.g., probation, imprisonment, fines) Chapter 47 sets forth general principles which relate to each of the different types of sentences. The provisions of the chapter spell out the purposes of the Code sentencing provisions, authorized types of sentences, special sentences which may be imposed when the defendant is an organization, means by which sentences of imprisonment for more than one year may be revised, and procedures for imposing multiple sentences.

§1151 Purposes
§1152 Authorized sentences
§1153 Sanctions for organizations

After enumerating in §1151 the goals of sentencing, the Code specifies in §1152 the types of sentences which may be imposed upon an individual or upon an organization. When a defendant has been convicted of a crime, a court is prohibited from imposing a sentence which does not fall within one of the categories listed in §1152(2) or (3).

§1152(1) reiterates a principle set forth in §4, namely that sentencing for all crimes—whether the crime is defined in Title 17-A or in another title of the Revised Statutes—must be done pursuant to the Code sentencing provisions. This means that any person convicted of criminal violations of the motor vehicle laws, fish and game laws, environmental laws, and so forth, must be sentenced under the provisions of Part 3 of the Code.

By way of illustration, assume that a person has been convicted of reckless driving for the first time. 29 M.R.S.A. §1311 provides that such persons may be punished by imprisonment for not more than 3 months or by a fine of not more than $500, or by both. When the Code becomes effective, this person may be punished by imprisonment for not more than 6 months, or by a fine of not more than $250, or by both. This is because the sentence provided for in 29 M.R.S.A. §1311 must be converted, through 17-A M.R.S.A. §4(2), to a Code sentencing class. Pursuant to 17-A M.R.S.A. §4(2) (E), because the maximum period of imprisonment (as provided by 29 M.R.S.A. §1311) is 3 months, reckless driving becomes a Class E crime. After making this conversion, we must refer to 17-A M.R.S.A. §§1252 and 1301 to determine the possible sentences for a Class E crime. §1252(2) indicates that a Class E crime is punishable by not more than 6 months imprisonment, and §1301 indicates that a Class E crime is punishable by not more than $250. These would be the maximum sentences which could be imposed upon a person convicted of reckless driving. (It should be noted that under this same sentence-conversion scheme, persons convicted of reckless driving for a second time will be subject to the same penalties as the person convicted of a first offense of reckless driving.) **[It is possible that §4 of the Code will not go into effect on April 1, 1976, but instead will go into effect at a future date. If the legislature does postpone the effective date of §4, persons convicted of crimes under statutes which are outside the Code will be sentenced pursuant to the penalties provided in those statutes and will not be sentenced under the Code. When the current session of the legislature enacts the bill amending the Criminal Code, officers should ascertain whether that bill postpones the effective date of §4. If the effective date is postponed, the effect of that postponement will be discussed in a future ALERT dealing with amendments to the Code.]**

§1152(2) lists the 4 types of sentences which may be imposed upon a natural person (as distinguished from an organization) who is convicted of a crime: (1) a suspended period of imprisonment together with probation; (2) an unconditional discharge; (3) a period of imprisonment; or (4) a fine. This list is exclusive, that is, these are the *only* types of sentences which may be imposed. However, §1152(2) (D) authorizes a court, in appropriate cases, to impose a fine

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in addition to probation or a sentence of imprisonment. Additionally, §1152(4) retains the right of a court to order, in addition to the criminal sentence imposed, the forfeiture of property, the revocation of a license, or other *civil* penalty, when the court is authorized by statute to impose such civil penalty.

§1152(3) establishes those sentences which may be imposed on an organization convicted of a crime. These are (1) probation; (2) unconditional discharge; (3) a fine; or (4) any of the sanctions authorized by §1153. The §1153 sanctions may be imposed in addition to probation or a fine, and a fine may be imposed in any case in which an organization is sentenced to probation. It should also be remembered that §1152(4), relating to the imposition of civil penalties, applies also to the sentencing of organizations.

§1154 Sentences in excess of one year deemed tentative

§1154, which applies only to sentences of imprisonment for more than one year, is designed to allow the sentencing judge to reconsider an imprisonment sentence when information about the defendant or the crime which was not known at the time of sentencing is brought to the judge's attention by the Department of Mental Health and Corrections. Before any defendant can be resentenced under this section, the court must hold a hearing at which the District Attorney, the Attorney General, and the victim of the crime have a right to be heard. This procedure is new to Maine law, since under existing law there is no authority for the sentencing court to revise a sentence of imprisonment once the defendant has started to serve the sentence.

§1155 Multiple sentences

This section is primarily of interest to judges and attorneys. In cases where a defendant has been convicted of more than one crime, §1155 establishes guidelines and procedures for the court to follow in determining whether the defendant's imprisonment sentences should be served *concurrently* (i.e. when a defendant serves a sentence for one crime *at the same time* that he is serving a sentence for another crime) or *consecutively* (i.e. when a defendant serves a sentence for one crime *after* he finishes serving a sentence for another crime). This section also establishes guidelines for the court to follow in determining whether fines should be cumulative.

CHAPTER 49—PROBATION AND UNCONDITIONAL DISCHARGE

§1201 Eligibility for probation and unconditional discharge

As noted above, §1152(2) provides that persons convicted of crime may be sentenced to a suspended term of imprisonment with probation or to an unconditional discharge. §1201 establishes when a person is *eligible* for one of these two types of sentences. Pursuant to §1201, a person convicted of a crime is eligible for probation or unconditional discharge unless the crime of which he has been convicted is homicide in the first or second degree or unless the court finds that the provisions of §1201(1)(A), (B) or (C) apply.

Once it has been determined that the person is eligible for probation or unconditional discharge, the court must determine whether the defendant is in need of the supervision, guidance, and assistance which probation can provide or whether there is a need to impose any condition on his release. (§1204 enumerates the conditions which may be attached to probation.) If the court finds that no such need exists, the court *must* sentence the person to an unconditional discharge. It is only when a court determines that the person needs supervision or that a condition should be imposed upon his release that the court may place the person on probation.

The term "unconditional discharge," which is used in this section and in other Code sentencing provisions, is new to Maine law. A person convicted of a crime is sentenced to unconditional discharge when the court determines that it would be inappropriate to sentence the person to imprisonment, to a fine, or to a suspended term of imprisonment with probation. Thus, a person sentenced to unconditional discharge is released without serving a period of imprisonment, without paying a fine and without having any conditions imposed upon his release. However, a person sentenced to unconditional discharge does not lose his criminal record—an unconditional discharge does not erase the conviction which gave rise to the discharge.

§1202 Period of probation; modification and discharge
§1203 Split sentences

§1202(1) sets out the maximum period of probation which may be imposed in a given case. It should be noted that the maximum period of probation depends upon the seriousness of the offense, but does not correspond in each instance to the maximum period of imprisonment authorized for the offense. Thus, for Class A, B, and C crimes the maximum period of probation is *less than* the maximum period of imprisonment authorized for those crimes. On the other hand, the maximum period of probation for Class D crimes is equal to and for Class E crimes is greater than the corresponding imprisonment terms for those crimes.

§1202(2) and (3) maintain flexibility in the probation system by authorizing the court to modify the requirements of probation or to

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terminate the period of probation. Flexibility is also provided by §1203, which authorizes the sentencing court to impose a "split sentence." This means that the court may place the convicted person on probation and order that the person be imprisoned for a portion of the probation. This combination of imprisonment and probation, which is also known as "shock sentencing," is designed to give certain offenders who may not merit a longer period of imprisonment a brief experience of imprisonment.

§1204 Conditions of probation
§1205 Preliminary hearing on violation of conditions of probation
§1206 Court hearing on probation revocation

§1204 establishes guidelines to assist the sentencing court in setting conditions of probation. The conditions listed in §1204(2) (A-K) are not exclusive, since §1204(2) (L) provides that the court may set other conditions which are related to rehabilitation or the public safety.

§§1204 and 1205 establish the procedure which must be followed in cases where the state seeks to revoke probation. These procedures are required as a matter of constitiutional law.

CHAPTER 51—SENTENCES OF IMPRISONMENT

§1251 Imprisonment for criminal homicide in the first or 2nd degree
§1252 Imprisonment for crimes other than criminal homicide in the first or 2nd degree
§1253 Calculation of period of imprisonment
§1254 Release from imprisonment

Under existing law, there are many statutes which prohibit defined conduct and which are punishable by a fine but which do not provide an imprisonment penalty. Under existing law, violations of these statutes are criminal offenses. However, when the Criminal Code goes into effect, every statute which establishes a criminal offense will carry with it the possibility of imprisonment. Statutes which prohibit conduct but do not carry an imprisonment penalty will become *civil violations.* This change reflects a basic policy decision, namely that conduct which is not deemed serious enough to be punishable by imprisonment should not be categorized as criminal.

As provided in §4, all crimes except first and 2nd degree homicide (§§201-202) are placed into five penalty classes—A,B,C, D, and E. (The process by which crimes defined outside the Code are converted into these sentencing classes is discussed above under Chapter 47.) §1252(2) establishes the *maximum* term of imprisonment for each of these sentencing classes and requires that the court, when imposing the imprisonment sentence, set a *definite* term of imprisonment. The effect of this requirement will be discussed shortly.

The sentencing provisions for first and 2nd degree homicide are set forth in §1251. §1251(4) requires the court to sentence a person who has been convicted of criminal homicide in the first degree to life imprisonment. In the case of a person convicted of criminal homicide in the 2nd degree, §1251(2) and (3) require the court to obtain a pre-sentence evaluation and recommendation from the Department of Mental Health and Corrections and, after considering such recommendation, to sentence the person to a period of imprisonment not less than 20 years. These are the *only* possible sentences for these two offenses. As noted earlier in this article, persons convicted of criminal homicide in the first or 2nd degree are not eligible for probation or unconditional discharge. Moreover, a fine may not be imposed in such cases because §1301 limits the court's authority to impose fines to cases involving Class C, D, or E crimes.

For Class A,B,C,D, and E crimes, if the court elects to sentence a defendant to imprisonment, it must set a *definite* period of imprisonment not to exceed the maximum established by §1252(2) for the particular class. Because the Code has abolished indeterminate sentences (for example, a sentence to imprisonment for a term "not less than 1 year nor more than 3 years") and parole, the length of time a person will be imprisoned will generally be the imprisonment period imposed by the sentencing court. However, the Code provides four ways in which the length of an imprisonment sentence may be reduced:

1. §1253(2) provides that when a person has been incarcerated while awaiting trial, or committed for pre-sentence evaluation in cases of criminal homicide in the 2nd degree, the length of time he is held in custody must be deducted from the time he is required to be imprisoned under his sentence.

2. §1253(3) and (4) authorize "good time" deductions for good conduct and for special assignments. Such deductions may only be earned by persons sentenced to imprisonment for more than 6 months.

3. §1254(2) authorizes the Superior Court to reduce the sentences of persons sentenced for criminal homicide in the first or 2nd degrees and persons sentenced for consecutive terms which exceed 20 years. In such cases, however, a person may not be released until he has served 25 years, if his sentence is life imprisonment, or 4/5 of his sentence, if the sentence is for a term of years in excess of 20 years.

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4. §1154 authorizes the sentencing court to revise an imprisonment sentence if it decides that the original sentence was based upon a misapprehension as to the offender or the offense or as to other circumstances. However, this section applies only to imprisonment sentences for a term in excess of one year. (§1154 is discussed above under chapter 47.)

Two remaining features of Chapter 51 are worthy of note. First, §1252(4) authorizes a longer term of imprisonment when a crime is committed with the *use* (*not* mere possession) of a dangerous weapon. If a person commits a Class A,B,C,D, or E crime and uses a dangerous weapon in the process, the sentencing class for the crime will be one class higher than it would otherwise be. Because there is no class higher than Class A, §1252(4) provides that when a person commits a Class A crime with a dangerous weapon the court should take that fact into account when it sets the term of imprisonment within the 20 year maximum.

Second, §1252(3) authorizes a court to add to a sentence of imprisonment an order that the defendant make *restitution* to the victim or victims of his crime. This provision illustrates what appears to be a basic policy of the Code sentencing provisions: that the criminal justice system should seek not only to mete out just and purposeful sentences to those who commit crimes, but should ensure, in appropriate cases, that those who have suffered losses as a result of crime are compensated. Similarly, in §1204(2) (G) the Code authorizes courts to order restitution in cases where an offender is placed on probation. (Other examples of the Code's encouragement of restitution are §§1151(2) and 1153(3)).

CHAPTER 53—FINES

§1301 Amount authorized

§1301(1) provides that a court may sentence a natural person (as distinguished from an organization) to pay a fine only for Class C, D, and E crimes. A fine may not be imposed upon a natural person who has committed a Class A or B crime or criminal homicide in the first or 2nd degree.

§1301(1) also establishes the maximum fines which may be imposed upon a natural person who has committed a crime. Ordinarily the maximum fine will be $1,000, $500, or $250 depending upon the sentencing class, as provided in §1301(1)(A),(B), and (C). However, 1301(1)(D) authorizes the court to impose a higher fine in cases where the defendant has derived pecuniary gain from the crime. In such cases a court may impose a fine which does not exceed twice the "pecuniary gain" (as that term is defined in §1301(2)) derived. By way of illustration, assume that a defendant has been convicted of theft and the value of the property taken by the defendant is $3,500. At the time of sentencing only $1500 of the property has been returned to the victim and the court has found that the defendant realized a §2,000 gain from the crime. Ordinarily, the maximum fine which could be imposed in such a case would be $1,000 because pursuant to §362(3) (A) the theft of the property worth $3,500 is a Class C crime. However under §1301(1) (D) the court may impose a fine which does not exceed twice the defendant's pecuniary gain. Therefore, in our example the court may impose a maximum fine of $4,000.

Section 1301(3) sets out the maximum fine which may be imposed when the defendant is an *organization.* Fines are authorized in the case of Class A and Class B crimes committed by organizations because imprisonment does not exist as an alternative punishment for organizations. §1301(3) (E) authorizes in the case of organizations a higher fine based upon pecuniary gain.

§1302 Criteria for imposing fines
§1303 Time and method of payment of fines
§1304 Default in payment of fines
§1305 Revocation of fines

§§1302-1305 recognize that in some cases in which a defendant is sentenced to pay a fine, the defendant will be unable to pay the fine although he has made reasonable attempts to do so. In such cases a defendant should not be imprisoned solely because he is unable to pay the fine.

§1302 states that a court may not impose a fine unless it determines that the defendant will be able to pay the fine. It also requires the court to consider the defendant's financial resources when it sets the fine. §1302(1) authorizes the court to permit a fine to be paid in installments when, for example, the defendant's financial resources would not permit him to pay the entire fine immediately.

§1304 applies when a defendant has defaulted in the payment of a fine and authorizes the court to hold a hearing at which the defendant must show that his failure to pay the fine was not due to a wilful refusal to obey the court's order or a failure to make a good faith attempt to obtain the necessary funds. If the defendant fails to make this showing he may be imprisoned for nonpayment of the fine. §1304(2) provides the court with alternatives in the event the defendant shows that his nonpayment was excusable.

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FORUM

This column is designed to provide information on the various aspects of law enforcement that do not readily lend themselves to treatment in an extensive article. Included will be comments from the Attorney General's staff, short bits of legal and non-legal advice, announcements, and questions and answers. Each law enforcement officer is encouraged to send in any questions, problems, advice, or anything else that he thinks is worth sharing with the rest of the criminal justice community.

NEWS FROM THE ACADEMY

The following information, items, and announcements concern the Maine Criminal Justice Academy in Waterville, which is a bureau of the Department of Public Safety and is the training institution for all law enforcement officers in the State of Maine.

Qualified Instructors Sought

Police officers and other members of local, county and state law enforcement agencies who have specialized skills or knowledge and who have an interest in teaching in police training programs should contact the Academy.

Interested persons should submit biographical information and qualifications to Mr. Cleon H. Turner, Basic Police School Coordinator, Maine Criminal Justice Academy, 93 Silver St., Waterville, Me. 04901.

Upcoming In-Service Police Schools

The following is a list of upcoming specialized in-service training police programs and their locations:

Basic Fingerprint (FBI): February 23-27, 1976 (Scarborough S.P. Barracks)

Kidnap-Hostage Negotiation (FBI): March 16 & 17, 1976 (Academy)

Kidnap-Hostage Negotiation (FBI): March 18 & 19, 1976 (Portland P.D.)

Police Instructor Training (FBI): April 12-16, 1976 (Academy)

Auto Theft (NATB, State, Local): April 13, 14 & 15, 1976 (Portland P.D.)

Advanced Fingerprint (FBI): March 29 - April 2, 1976 (Academy)

Crime Scene Search (FBI): April 26 - 30, 1976 (Bangor P.D.)

It should be noted that the two sessions in Kidnap-Hostage Negotiation are directed towards command-level personnel and those officers likely to be involved in such negotiations.

Information about the above training programs may be obtained thru local police agencies or from the Academy. Please contact David H. Dix, In-Service Training Officer, at 873-2651.

Media Resource Center Films

All law enforcement agencies are reminded of the services that are provided by the Academy Media Resource Center. The Academy provides a free loan service of all criminal justice textbooks and training films held in the Center to any law enforcement agency requesting them.

A catalog listing all training films with a brief description of each will be provided upon request along with instructions for shipping procedures. Supplements to the catalog are mailed to participating agencies when new films are received by the Center. Law enforcement personnel who are in need of research material for training presentations or training program development should also feel free to request assistance in the form of printed material from our Media Resource Center on a loan basis. Numerous periodicals and government research documents are available for study.

For further information on the Media Resource Center, please write or call Mr. Cleon H. Turner, Maine Criminal Justice Academy, 93 Silver St., Waterville, Me. 04901 (873-2651)

Recent additions to our film library include:

Accident Investigation I, II and III: A three-film program designed to give the student a step-by-step overview of accident investigation as well as working knowledge of basic techniques and terminology.

Auto Theft: An overview of the basic techniques used by auto thieves to gain access to vehicles, alter identification marks, and dispose of vehicles. Highlighted are procedures for identifying vehicle as being stolen.

Felony Vehicle Stops: Emphasizes caution and attention to detail in making safe apprehensions. Included are tips on tactical positions, proper communications, and the importance of back-up personnel and teamwork.

Officer Down - Code 3: A critical examination of the circumstances surrounding police fatalities and identification of the ten basic mistakes which pose recurring threats to an officer's life and guidelines to prevent their recurrence.

Patrol Car Radio: Proper etiquette for radio transmitters, procedure for giving and receiving information, physical treatment of equipment, and interaction with dispatchers.

Handling the Juvenile Offender: An introductory overview of problems dealing with youthful offenders. Traces an offender from first encounter with a petty larceny to an attempt on an officer's life in later years.

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Field Interviewing: Discusses the effort of officers in the field to gain information from persons not in custody. Also discussed is the impact of "Miranda" and the difference between field interviews and interrogations.

Probable Cause - Search & Seizure: Demonstrates those hard to find circumstances that build probable cause. Gives situations and circumstances that can be used as guidelines for search of persons, vehicles, rooms, etc.

Crimes in the Home: Short vignettes demonstrating effective means of protecting life and property in the home.

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

Joseph E. Brennan — Attorney General
Richard S. Cohen — Deputy Attorney General In Charge of Law Enforcement
John N. Ferdico — Director, Law Enforcement Education Section
Peter J. Goranites — Ass't Attorney General
Michael D. Seitzinger — Ass't Attorney General

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