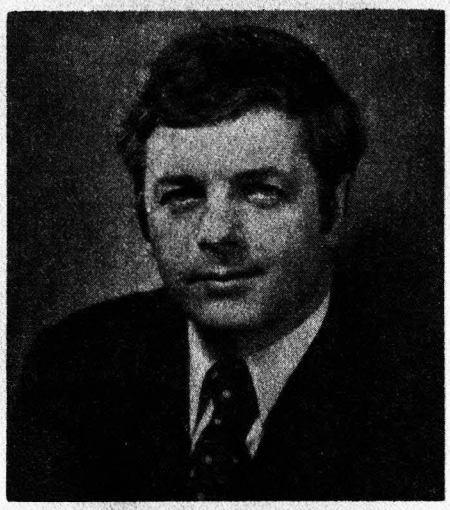
APRIL - MAY 1976

ALERT

CRIMINAL DIVISION

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



MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

I would like to again remind all recipients of the ALERT Bulletin that we are completely revising the ALERT mailing list. As stated in the February-March 1976 ALERT, all recipients should send us their correct names and addresses and all law enforcement agencies should send lists of all active personnel with **home** addresses. Any recipient whose name and address is not received will be removed from the mailing list. Please write to the Law Enforcement Education Section, Department of the Attorney General, State House, Augusta, Maine 04333 or call 289-2146.

Also, enclosed with this issue of ALERT is a revised "Maine Motor Vehicle Offenses and Infractions" list reflecting all changes in the law enacted by the Special Session of the 107th Legislature. The previously issued list should be destroyed.

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

MAINE CRIMINAL CODE III
Amendments

This issue of the ALERT will list all of the sections of the Maine Criminal Code (Title 17-A of the Maine Revised Statutes) that have been amended by the Special Session of the 107th Maine Legislature. The Code and the amendments went into effect on May 1, 1976. Because of space limitations only those amendments which have particular relevance to law enforcement officers will be reproduced. Many of the amendments which are not reproduced make only very minor changes. Officers may obtain the text of non-reproduced amendments from the executive officer of their agency, to whom all the amendments to the Code have been sent.

For purposes of indicating what parts of a section are changed by an amendment, the following format will be utilized. If the entire section is changed, only the section number and title will be listed. If only a certain subsection or paragraph of a section are changed, the number of that subsection or paragraph will be listed under the section number and title. Some sections, subsections, and paragraphs, of course will be reproduced.

In order to avoid confusion, each reproduced amendment will be set out in full as it now appears in the statutes. All new language added to the Code amendments reproduced in this ALERT will appear in **bold** print. Whenever appropriate, comments will explain the significance of amendments. New provisions not found in the original draft of the Code will be preceded by an asterisk (*).

When reading these amendments, law enforcement officers should consult their copies of the Code and the January 1976 and February-March 1976 ALERTs. Officers are advised to write in important changes and make appropriate notations both in the Code and in the ALERTs. All comments in the January and February-March ALERTs are still valid unless otherwise state in this ALERT.

PART ONE
GENERAL PRINCIPLES

CHAPTER 1 PRELIMINARY

§1 Title; effective date; severability

§1(1)
§1(2)

COMMENT: The discussion of §1 of the Code in the January 1976 ALERT should be disregarded.

§2 Definitions

§2(23) "Serious bodily injury" means a bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or loss or **substantial** impairment of the

[*Continued on page 2*]

function of any bodily member or organ, **or extended convalescence necessary for recovery of physical health.**

COMMENT: Since "serious bodily injury" is an element of certain crimes such as aggravated assault, the change in its definition affects the type of evidence that may be used to prove that element. Information which shows an "extended convalescence necessary for recovery of physical health" is now relevant to establish serious bodily injury and officers should gather evidence on convalescence. Officers should note that the convalescence must be necessary in order to recover from some physical *ailment and not solely from a psychological problem.*

§3 All crimes defined by statute; civil actions

§3 (1)(B)

§4 Classification of crime; civil violations

***§4-A Crimes and civil violations outside the code**

COMMENT: Although amendments to §4 and §4-A are not reproduced here, it must be emphasized that the sentence conversion provisions *found in §4 of the Code will not take effect until October 1, 1977. This means that the penalty that a law enforcement officer finds in a criminal statute outside of the Code remains in force until that date. With very few exceptions, the only crimes which are classified as Class A, B, C, D, or E for sentencing purposes are those in Title 17-A.*

In the discussion of §4 in the January 1976 ALERT, it was stated that "when an individual engages in conduct prohibited by a statute outside the Code and which is not punishable by a penalty of imprisonment, he is guilty of a civil violation *and not a criminal offense." While this is still true, the new §4-A provides that the conversion of these offenses to civil violations will not take place until October 1, 1977.*

§5 Pleading and proof

§5(2)(A)

§5(4)-Repealed

§6 Application to crimes outside the code

1. The provisions of Chapters 1,3,5,7,47,49,51 and 53 are applicable to crimes defined outside this code, unless the context of the statute defining the crime clearly requires otherwise.

2. Except for purposes of determining the applicable sentence, all crimes defined outside this code and not classified as Class A, Class B, Class C, Class D or Class E crimes, which are punishable by a maximum period of imprisonment of one year or more, shall be treated as Class C crimes.

3. Except for purposes of determining the applicable sentence, all crimes defined outside this code and not classified as Class A, Class B, Class C, Class D or Class E crimes, which are not punishable by imprisonment or which are punishable by a maximum period of imprisonment of less than one year, shall be treated as Class D crimes.

COMMENT: §6(2) and *§6(3) should be read very carefully by law enforcement officers. Although it has already been explained that the sentences for crimes defined outside of the Code remain unchanged until October 1, 1977, an offense must sometimes be given a class for other purposes. §6 accomplishes this by using the same dividing line as has been traditionally used to define felonies and misdemeanors.*

The importance of §6 will become clearer when the officer reads Maine's new warrantless arrest statute, set out in §15 below. Under §15, the authority to arrest for a particular offense depends entirely upon the classification of the offense. Since crimes defined outside the Code are not expressly given a class, the officer must first look at the penalty and then look at §6 to determine the class. If, for example, the maximum period of imprisonment for the crime is one year or more, it should be treated as a Class C crime. This means that a law enforcement officer may, under §15, make a warrantless arrest for such a crime when he has probable cause to believe that the person to be arrested has committed or is committing the crime. If the maximum period of imprisonment for the offense is less than one year, it should be treated as a Class D crime. An officer may, under §15, make a warrantless arrest for such a crime, only if the person to be arrested has committed or is committing a crime in his presence.

§9 Indictment and jurisdiction

§9(3)

§10 Definitions of culpable states of mind

§10(4)(C)

§11 Requirement of culpable mental states; liability without culpability

§11(5)

§13 Other offenses

§14 Separate trials

***§15 Warrantless arrests by a law enforcement officer**

1. Except as otherwise specifically provided, a law enforcement officer shall have the authority to arrest without a warrant:

A. Any person who he has probable cause to believe has committed or is committing:

(1) Criminal homicide in the first degree or criminal homicide in the 2nd degree; or

(2) Any Class A, Class B, or Class C crime; and

B. Any person who has committed or is committing a Class D or Class E crime in his presence.

[*Continued on page 3*]

2. For the purposes of subsection 1, paragraph B, criminal conduct has been committed or is being committed in the presence of a law enforcement officer when one or more of the officer's senses afford him personal knowledge of facts which are sufficient to warrant a prudent and cautious law enforcement officer in believing that a Class D or Class E crime is being or has just been committed and that the person arrested has committed or is committing it. An arrest made pursuant to subsection 1, paragraph B, shall be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit.

COMMENT: This new warrantless arrest statute closely follows the common law rules of arrest for felonies and misdemeanors. Thus, probable cause is sufficient to allow a warrantless arrest for first or 2nd degree criminal homicide, a Class A, a Class B, or a Class C crime.

A warrantless arrest may be made for a Class D or Class E crime, however, only if the offense is committed in the officer's presence. §15(2) clarifies what has long been a source of confusion, namely, the meaning of "committed in the presence of a law enforcement officer." Under the new arrest statute, certainty is not required. Rather, the officer must have facts which would justify a prudent and cautious law enforcement officer in believing that the crime is being or has just been committed. Furthermore, the facts must stem from personal knowledge acquired through the officer's senses. Once the officer has obtained through his senses facts which would warrant the belief *that a Class D or Class E crime is being or has just been committed and the person to be arrested has committed or is committing it, he may make the arrest.*

It must be noted that §15 speaks entirely in terms of crimes which have a sentencing class. To determine the power to arrest for offenses defined outside of the Code, officers should read the comment to §6.

***§16 Warrantless arrests by a private person**

COMMENT: This section sets out the authority of private persons to make arrests.

***§17 Enforcement of civil violations**

1. A law enforcement officer who has probable cause to believe that a civil violation has been committed shall deliver a citation to such person directing him to appear in the District Court to answer the allegation that he has committed the violation. The citation shall include the signature of the officer, a brief description of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. As soon as practicable after service of the citation, the officer shall cause a copy thereof to be filed with the court.

2. Any person to whom a law enforcement officer is authorized to deliver a citation for a violation of Title 22, Section 2383, pursuant to subsection 1 who intentionally fails or refuses to provide such officer reasonably credible evidence of his name and address is guilty of a Class E crime, provided that he persists in such failure or refusal after having been informed by the officer of the provisions of this subsection. If such person furnishes the officer evidence of his name and address and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period such verification is being attempted, the officer may require the person to remain in his presence for a period not to exceed 2 hours. During this period, if the officer reasonably believes that his safety or the safety of others then present so requires, he may search for any dangerous weapon by an external patting of such person's outer clothing. If in the course of such search he feels an object which he reasonably believes to be a dangerous weapon, he may take such action as is necessary to examine such object, but he may take permanent possession of any such object only if it is subject to forfeiture. The requirement that the person remain in the presence of the officer shall not be deemed an arrest. After informing the person of the provisions of this subsection, the officer may arrest the person either if the person intentionally refuses to furnish any evidence of his name and address or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the person has intentionally failed to provide reasonably credible evidence of his name and address.

3. If, at any time subsequent to an arrest made pursuant to subsection 2, it appears that the evidence of the person's name and address was accurate, he shall be released from custody and any record of such custody shall show that he was released for that reason. If, upon trial for violating subsection 2, a person is acquitted on the ground that the evidence of his name and address was accurate, the record of acquittal shall show that such was the ground.

4. Any person who fails to appear in court, as directed by a citation served on him pursuant to subsection 1, is guilty of a Class E crime. Upon a failure to appear, the court may issue a warrant of arrest. It is an affirmative defense

[*Continued on page 4*]

to prosecution under this subsection that the failure to appear was neither intentional nor knowing.

COMMENT: §17 is probably the most complicated amendment to the Code. In addition to its length, it creates procedures and crimes which are entirely new to Maine law. As a result, this comment can only summarize the most important features of the section; a future issue of the ALERT will discuss it in more detail.

§17(1) authorizes law enforcement officers to deliver citations to persons who they have probable cause to believe have committed civil violations. Although the statute sets out in clear language the information that the citations must include, the preparation of uniform citations will simplify the enforcement process. Officers will be notified in the ALERT when such citation forms are available.

§17(4) makes it a Class E crime to fail to appear in court when directed to do so by a citation. Since 29 M.R.S.A. §1(17-C) now defines a traffic infraction as a civil violation, this crime will also apply to persons who fail to appear in court as directed by a Uniform Traffic Ticket.

The first point that must be made about §17(2) and §17(3) is that, unlike the rest of §17, they apply only to violations of 22 M.R.S.A. §2383 (Possession of a usable amount of marijuana). Accordingly, the power to detain under §17(2) arises only when the officer has probable cause to believe that the person has committed a violation of 22 M.R.S.A. §2383 and also when "the suspected civil violator acts in a manner which gives the law enforcement officer probable cause to believe that an accurate identification *has not been forthcoming . . ." (The quoted language is from Opinion of the Justices, March 19, 1976). Under the court interpretation, the fact that a person has either no, or only limited, identification does not justify detention. Rather, the officer must have "probable cause to believe that said person has not accurately identified himself." The officer must be able to give a good reason for disbelieving evidence of name and address when he detains a person who has provided* some *evidence of his name and address.*

Another important aspect of §17(2) is that it authorizes detention solely to obtain the evidence which will enable the officer to write the citation. Thus, if an officer already knows the name and address of a suspected violator, he may not detain him, regardless of the fact that the suspect may be totally uncooperative. Similarly, the officer is under an obligation to use his best efforts to verify the evidence furnished him.

In conclusion, officers should expect that their use of this newly created authority to detain will be closely scrutinized. Accordingly, officers should use this power cautiously and make certain that they comply with both the language and the intent of the statute.

CHAPTER 3 CRIMINAL LIABILITY

§58 Mental abnormality

*§58(1-A)

§58(2)

***§58-A Intoxication**

CHAPTER 5 JUSTIFICATION

§104 Use of force in defense of premises

§105 Use of force in property offenses

§107 Physical force in law enforcement

§107(2)(B)(2) - The entire text of §107(2)(B)(1) and (2) is reproduced here to avoid confusion.

2. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:

B. To effect an arrest or prevent the escape from arrest of a person whom he reasonably believes

(1) has committed a crime involving the use or threatened use of deadly force, or is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely seriously to endanger human life or to inflict serious bodily injury unless apprehended without delay; and

(2) He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest **or prevent the escape from arrest** and has reasonable grounds to believe that the person is aware of **this advice or he reasonably believes that the person to be arrested otherwise knows that he is a law enforcement officer attempting to effect an arrest or prevent the escape from arrest.**

COMMENT: The above provision relates to the circumstances under which a law enforcement officer may use deadly force. The purpose of the amendment is to eliminate the requirement that the officer advise the suspect that he is an officer attempting to make an arrest, if he reasonably believes that the suspect already knows these facts. Despite this amendment, the safest course will always be for the officer to advise the person, unless there is a very good reason why such advice cannot be given.

*§ 107(2)(B) **(3) For purposes of this paragraph, a reasonable belief that another has committed a crime involving use or threatened use of deadly force means such reasonable belief in**

[*Continued on page 5*]

facts, circumstances and the law which, if true, would constitute such an offense by such person. If the facts and circumstances reasonably believed would not constitute such an offense, an erroneous though reasonable belief that the law is otherwise justifies the use of force to make an arrest or prevent an escape.

§107(4)
§107(5)
§107(6)-Repealed
§107(8)
§108(2)

COMMENT: Although not reproduced here, many of the amendments to Chapter 5 on Justification deal with the right of a private person to use force. Law enforcement officers should become familiar with these provisions since the excessive or unauthorized use of force by a private person constitutes criminal conduct.

PART TWO SUBSTANTIVE OFFENSES

CHAPTER 7 OFFENSES OF GENERAL APPLICABILITY

§151 Conspiracy
§151(9)

§152 Attempt
§152(4)

CHAPTER 9 OFFENSES AGAINST THE PERSON

§201 Criminal homicide in the 1st degree
§201(2)(A)
§201(2)(B)-Repealed
§201(2)(C) The person knowingly created a great risk of death to **4 or more** persons;

COMMENT: From the perspective of the law enforcement officer, the most important change in §201 is found in paragraph C. When investigating a criminal homicide, especially one that occurred in a crowded place, the officer should look for evidence that the actions of the suspect created a great risk of death to at least four persons. If there is evidence to this effect, the offense may be criminal homicide in the first degree.

§202 Criminal homicide in the 2nd degree
§202(1) **A person is guilty of criminal homicide in the 2nd degree if:**

A. He causes the death of another intending to cause such death, or knowing that death will almost certainly result from his conduct; or

B. He intentionally or knowingly causes another to commit suicide by the use of force, duress or deception.

COMMENT: §202(1)(A) continues the Code definition of criminal homicide in the 2nd degree, while §202(1)(B) makes it an equally serious offense to cause another person to take his own life through the use of force, duress, or deception. Accordingly, evidence that one person helped to bring about the suicide of another person should be investigated. Even if there is no proof of force, duress, or deception, the possibility that the person committed the crime of aiding or soliciting suicide, found in §206, would still exist.

§204 Criminal homicide in the 4th degree
§204(1)(B) **Causes the death of another human being under circumstances which would otherwise be criminal homicide in the first or 2nd degree except that the actor causes the death while under the influence of extreme mental or emotional disturbance upon adequate provocation.**

COMMENT: Apart from making some important procedural changes, this amendment restores the concept, found in prior Maine law, that murder becomes voluntary manslaughter only if the mental or emotional disturbance was brought about by adequate provocation. *Thus, evidence that the person who committed the homicide was provoked and evidence regarding the cause of the provocation remain important. The last two sentences in the discussion of §204 in the February-March 1976 ALERT should be disregarded.*

§206 Criminal homicide in the 6th degree
§206(1)

§208 Aggravated Assault
§208(1)(C) - Add the following sentence:

Such circumstances include, but are not limited to, the number, location or nature of the injuries, or the manner or method inflicted.

COMMENT: Under §208 of the Code, one way of committing the crime of aggravated assault is to intentionally, knowingly, or recklessly cause bodily injury to another under circumstances manifesting extreme indifference to the value of human life. This amendment gives law enforcement officers some general examples of the types of evidence which can be used to prove extreme indifference to human life.

An important purpose of this amendment is to make it clear that even if the victim does not suffer serious bodily injury, the actor may be guilty of aggravated assault. Thus, repeated blows in the area of a vital organ may be sufficient. The same may be true if the assault results in a large number of minor injuries. With respect to the manner or method inflicted, the extent of the danger or pain involved would probably be relevant. For example, holding a person's head under water for a long period of time might be aggravated assault, even if the act

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does not cause serious bodily injury.

CHAPTER 11 SEX OFFENSES

§251 Definitions and general provisions

§251(1)(C)

§252 Rape

§252(1)(A) With any person, **not his spouse,** who has not **in fact** attained his 14th birthday; or

COMMENT: The significance of this amendment is found in the words "in fact." Whenever the words "in fact" appear in a statute defining a crime, it means that the prosecution need not prove a culpable mental state (mens rea) with respect to the element to which the words refer. In the rape statute, for example, it makes no difference that the defendant did not know that the victim was less than 14 years of age. The defendant would be guilty even if he had good reason to believe that the victim was more than 14 years of age.

§252(2)

§252(3)

§253 Gross sexual misconduct

§253(1)(B) The other person has not **in fact** attained his 14th birthday; or

§253(2)(B) and (D)

§254 Sexual abuse of minors

§254(1) A person is guilty of sexual abuse of a minor if, having attained his **19th** birthday he engages in sexual intercourse or a sexual act with another person **not his spouse,** who has attained his 14th birthday but has not attained his 16th birthday; provided the actor is at least 5 years older than such other.

COMMENT: This amendment provides that in order to commit the crime of sexual abuse of a minor the person committing the crime must be at least 19 years of age.

§255 Unlawful sexual contact

§255(1)(C) The other person has not **in fact** attained his 14th birthday and the actor is at least 3 years older; or

CHAPTER 15 THEFT

§352 Definitions

§352(3)(C) To dispose of the property under circumstances that make it unlikely that the owner will recover it **or that manifest an indifference as to whether the owner will recover it.**

COMMENT: This amendment expands the Code's definition of "intent to deprive." Since an intent to deprive is an element of almost all theft offenses, the amendment should help law enforcement officers to determine the type of evidence that may be used to prove these crimes.

Maine case law provides an example of the meaning of the above change. In State v. Gordon, *321 A.2d 352 (Supreme Judicial Court of Maine, 1974), the court held that a jury could find an intent to deprive even though it was the purpose of the defendant, who took an automobile at gun point, to use the property for only a limited period of time, and the defendant communicated that purpose to the owner. According to the court, the defendant abandoned the automobile in a manner that suited his own interests and that revealed an indifference as to whether the owner would recover it. The defendant's actions were sufficient to justify a finding of an intent to deprive. This amendment codifies Maine case law and emphasizes the importance of collecting evidence on what is done with wrongfully obtained property.*

§352(4)-First sentence

§352(5)(E)

§359 Receiving stolen property

§359(2)

§360 Unauthorized use of property

§360(1)(C)

§360(2)-Last sentence

§361 Claim of right; presumptions

§361(2) Proof that the defendant was in exclusive possession of property that had recently been taken under circumstances constituting a violation of this chapter or of chapter 27 shall give rise to a presumption that the defendant is guilty of the theft of the property, as the case may be, **and proof that the theft or robbery occurred under circumstances constituting a violation of section 401 also shall give rise to a presumption that the defendant in exclusive possession of property recently so taken is guilty of the burglary.**

COMMENT: This amendment extends to burglary cases the same presumption contained in the Code for theft and robbery. For a discussion of the relevance of this presumption to law enforcement officers, see page 6 of the February-March 1976 ALERT.

§362 Classification of theft offenses

§362(3)(B)

CHAPTER 17 BURGLARY AND CRIMINAL TRESPASS

§401 Burglary

§401(3)

CHAPTER 19 FALSIFICATION IN OFFICIAL MATTERS

§451 Perjury

§451(1)(A)

§451(4)-First sentence

§452 False swearing

§452(3)-First sentence

[*Continued on page 7*]

CHAPTER 21 OFFENSES AGAINST PUBLIC ORDER

§501 Disorderly conduct

§501(2)

§501(4)

§506 Harassment by telephone

COMMENT: The name of the offense defined in §506 is changed from "Harassment" to "Harassment by telephone," and the sentencing class is lowered from Class D to Class E.

***§506-A Harassment**

1. A person is guilty of harassment if, without reasonable cause, he engages in any course of conduct with the intent to harass, torment or threaten another person, after having been forbidden to do so by any sheriff, deputy sheriff, constable, police officer or justice of the peace.

2. Harassment is a Class E crime.

COMMENT: This section replaces the malicious vexation statute, 17 M.R.S.A. §3703, which was repealed by the Code. As did the old statute, §506-A authorizes certain public officials to prohibit one person from harassing another and makes it a crime if a person so warned persists in the conduct. In contrast with the malicious vexation statute, this provision requires a "course of conduct," which means that the person must perform more than a single act of harassment.

§509 False public alarm or report

§509(1)(B) He knowingly gives **or causes to be given** false information to any law enforcement officer, member of a fire fighting agency, including a volunteer fire department, **or any other person knowing that such other is likely to communicate the information to a law enforcement officer or member of a fire fighting agency,** concerning a fire, explosive or other similar substance which is capable of endangering the safety of persons, knowing that such information is false, or knowing that he has no information relating to the fire, explosive or other similar substance.

COMMENT: The first important feature of this amendment is that it expands the definition of the crime to include an individual who causes the false information to be given. Thus, a person who instructed a child to make a false bomb report to the police would be guilty of a violation of §509, just as if he had personally communicated the information.

The second major change is that, under this amendment, the crime may be committed when the false report is given to another person and the actor knows *that such other person is likely to communicate it to a law enforcement officer or member of a fire fighting agency. In short, the report need not be made directly to the authorities. The question may arise as to how the state proves, in the absence of a confession, the knowledge required by the statute. It would seem that in many cases, a jury could find that the defendant must have been aware of the likelihood that his false information would be reported to the police or fire department. Accordingly, officers should not refrain from making an arrest solely because they have no direct evidence of the actor's knowledge, unless, for example, the information was clearly given and received as part of a joke.*

§510 Cruelty to animals

§501(1)-First sentence

§510(1)(D)

515 Unlawful prize fighting

§515(1)(B)

CHAPTER 23 OFFENSES AGAINST THE FAMILY

§554 Endangering the welfare of a child

§554(1)

§556 Incest

§556(1) **A person is guilty of incest if, being at least 18 years of age, he has sexual intercourse with another person as to whom he knows he is related within the 2nd degree of consaguinity.**

COMMENT: This amendment redefines the crime of incest to prohibit sexual intercourse with another person related "within the 2nd degree of consanguinity." Persons related to another within the 2nd degree of consanguinity include one's parents; grandparents; children; grandchildren; brothers and sisters; aunts and uncles; nieces and nephews; and first cousins. Since the term consanguinity refers only to blood relatives, the statute does not prohibit sexual intercourse between persons who are related only by marriage.

CHAPTER 27 ROBBERY

§651 Robbery

1. A person is guilty of robbery if he commits or attempts to commit theft and at the time of his actions:

A. He recklessly inflicts bodily injury on another;

B. He threatens to use force against any person present with the intent

(1) to prevent or overcome resistance to the taking of the property, or to the retention of the property immediately after the taking; or

(2) to compel the person in control of the property to give it up or to engage in other conduct which aids in the taking or carrying away of the property;

C. He uses physical force on another with the intent enumerated in paragraph B, subparagraphs (1) or (2),

D. He intentionally inflicts or attempts to inflict bodily injury on another; or

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E. He or an accomplice to his knowledge is armed with a dangerous weapon in the course of a robbery as defined in paragraphs A through D.

2. Robbery as defined in subsection 1, paragraphs A and B, is a Class B crime. Robbery as defined in subsection 1, paragraphs C, D and E, is a Class A crime.

§652-Repealed

COMMENT: The crimes of robbery and aggravated robbery were consolidated into a single section. Paragraph E now elevates robbery to aggravated robbery when the defendant, although unarmed, knows his accomplice is armed.

CHAPTER 29—FORGERY AND RELATED OFFENSES

§701 Definitions
§701(1)

§702 Aggravated forgery
§702(1)

§703 Forgery
§703(1)(A)

COMMENT: In both sections 702(1) and 703(1)(A), "endorses" has been inserted after the word "completes." As a result, the crimes of aggravated forgery and forgery may be committed by means of a false endorsement. "Endorse" means to write a name on the back of a check or other commercial paper.

§703(2)

§708 Negotiating a worthless instrument
§708(4)

CHAPTER 31 OFFENSES AGAINST PUBLIC ADMINISTRATION

§752 Assault on an officer

§752(2) - Second sentence repealed.

§752(3) **Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, is a Class C crime.**

§755 Escape
§755(3) - Second sentence
*§755(3-A)

§756 Aiding escape
§756(2)

§757 Trafficking in prison contraband
§757(2)

CHAPTER 33 ARSON AND OTHER PROPERTY DESTRUCTION

§802 Arson
§802(2)

§805 Aggravated criminal mischief
*§805(1-A)
*§805(1-B)

§806 Criminal mischief
§806(1)(A)
*§806(1-A)

CHAPTER 35 PROSTITUTION AND PUBLIC INDECENCY

§854 Public indecency

§854(1)(A)(2) he knowingly exposes his genitals under circumstances which, in fact, are likely to cause affront or alarm; or

COMMENT: It must be emphasized that the amendment does not make it permissible to expose one's genitals to a person under the age of 12. In many instances, such conduct will occur "under circumstances which, in fact, are likely to cause affront or alarm." Furthermore, the age of the person present when such conduct is engaged in would certainly seem to be one factor to be considered in determining the likelihood of affront or alarm.

CHAPTER 37 FRAUD

§901 Deceptive business practices
§901(1)(E)-Repealed

COMMENT: This provision was repealed since the same conduct is already prohibited by 17 M.R.S.A. §1609-A. Because §901(1)(E) has been repealed, the reference to that section on page 11 of the February-March 1976 ALERT should be disregarded.

§901(3)(C) - Repealed

CHAPTER 39 UNLAWFUL GAMBLING

§951 Inapplicability of chapter
§951

§953 Aggravated unlawful gambling
§953(1)(C)

§954 Unlawful gambling
§954(1)

CHAPTER 45 DRUGS

§1101 Definitions
§1101(1)
§1101(10)

§1102 Schedules W,X,Y and Z
§1102(1)(C), (D), and (E) - Repealed
§1102(1)(H)
*§1102(2)(H), (I), and (J)
§1102(3)

COMMENT: In addition to some minor changes, this group of amendments moves the drugs listed in §1102(1)(C), (D), and (E) to §1102(2) (H), (I), and (J). The effect of the change is to reclassify the hallucinogenic drugs contained in §1102(1)(C), (D), and (E) from Schedule W to Schedule X. Officers should make a note of this change in their Codes.

§1105 Aggravated trafficking or furnishing scheduled drugs

§1105(1) A person is guilty of aggravated trafficking or furnishing scheduled drugs if he trafficks with or furnishes to a child, **in fact,** under 16 a scheduled drug in violation of **sections** 1103, 1104 **or 1106.**

COMMENT: The meaning of the phrase "in fact" has already been explained in the comment to §252(1)(A). This amendment also corrects an omission in the Code by adding a reference to §1106 ("Unlawfully furnishing scheduled drugs").

§1111 Possessions of hypodermic apparatuses

*§1111(2) **Possession of hypodermic apparatuses is a Class D crime.**

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§1112 Analysis of scheduled drugs
§1112(1)
§1112(2)
§1112(3)-Repealed

§1115 Notice of conviction

CHAPTER 47 GENERAL SENTENCING PROVISIONS

§1152 Authorized sentences
§1152(1) Every natural person and organization convicted of a crime shall be sentenced in accordance with the provisions of this Part, **except that the sentence authorized for a crime defined outside the code, and not classified as a Class A, Class B, Class C, Class D or Class E crime shall remain in effect.**

COMMENT: This amendment reiterates the fact that sentences in criminal statutes outside of the Code will remain in effect at least until October 1, 1977. Accordingly, the discussion of §1152(1) on page 15 of the February-March 1976 ALERT should be disregarded for the immediate future.

§1152(4)

***§1156 Sentence for burglary**

Notwithstanding any other provision of this chapter or of chapter 49, when a person is convicted of a 2nd or subsequent violation of section 401, the imposition or execution of the sentence appropriate to the classifications contained in section 401 shall not be suspended and probation shall not be granted. Notwithstanding any other provision of this chapter, when a person is convicted and sentenced to imprisonment for a violation of any of the provisions of section 401 and that violation occurred at a time when that person was on bail in connection with a prior violation of section 401, the sentence imposed for that 2nd offense shall not be served concurrently with any sentence imposed in connection with that first offense.

COMMENT: This section provides that the sentence imposed for a second conviction of burglary may not be suspended, but must be served by the defendant. Law enforcement officers who know or believe that an individual has a prior conviction under section 401 should communicate this information to the prosecuting attorney. It should be noted, however, that the section apparently does not include, as prior convictions, violations of the burglary statutes in effect before the Code.

CHAPTER 49 PROBATION AND UNCONDITIONAL DISCHARGE

§1201 Eligibility for probation and unconditional discharge
§1201(1)

§1204 Conditions of probation
§1204(2)
*§1204(2-A)

§1205 Preliminary hearing on violation of conditions of probation
§1205(1)
*§1205(4)

§1206 Court hearing on probation revocation
§1206(1)

COMMENT: The amendments to Chapter 49 are of primary interest to probation officers. Those officers should read the changes carefully, paying particular attention to §1205(1) which restores their authority to arrest for violations.

CHAPTER 51 SENTENCES OF IMPRISONMENT

§1251 Imprisonment for criminal homicide in the first or 2nd degree
§1251(2)
§1251(4)

§1252 Imprisonment for crimes other than criminal homicide in the first or 2nd degree
§1252(1)
*§1252(2-A) **Any term of imprisonment imposed upon a person convicted of a crime defined outside this code, and not classified as a Class A, Class B, Class C, Class D or Class E crime, must be for a definite term not to exceed the maximum term authorized for the crime.**

COMMENT: As noted previously, the sentences authorized for crimes defined outside the Code remain in effect until October 1, 1977. This amendment requires, however, that terms of imprisonment for those offenses must be for definite periods of time. In other words, indefinite terms, such as "not less than 2 years nor more than 4 years," are abolished for both Code crimes and offenses in other Titles. The same is true with respect to parole. To summarize, the authorized terms of imprisonment in statutes outside the Code are unchanged, but the practice of giving indefinite terms of imprisonment is eliminated.

§1252(3)-2nd sentence
*§1252(5) **Notwithstanding any other provision of this code, if the State pleads and proves that a Class A, B, C or D crime was committed with the use of a firearm against a person, the minimum sentence of imprisonment, which shall not be suspended, shall be as follows: When the sentencing class for such crime is Class A, the minimum term of imprisonment shall be 4 years; when the sentencing class for such crime is Class B, the minimum term of imprisonment shall be 2 years and when the sentencing class for such crime is Class C, the minimum term of imprisonment shall be one year. For purposes of this subsection, the applicable sentencing class shall be determined in accordance with subsection 4.**

COMMENT: This amendment requires mandatory terms of imprisonment for Class A, B, C or D crimes committed with the use of

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a firearm against a person. Since §1252(4) of the Code already provides that the sentencing class for an offense committed with a dangerous weapon is one class higher than it would otherwise be, it is important to understand how these two provisions work.

Assume, for example, that a person commits criminal homicide in the 4th degree by recklessly killing another person with a gun. Although criminal homicide in the 4th degree is a Class B crime, the use of a dangerous weapon would raise it to a Class A crime under §1252 (4). By virtue of the fact that the dangerous weapon was a firearm, which was used against a person, the above amendment mandates the imposition of a minimum term of imprisonment. The minimum term can be determined by consulting §1252(5), which states that it shall be 4 years for a Class A crime. Accordingly, the court would have to sentence the defendant to at least 4 years in prison.

§1254 Release from imprisonment
§1254(2)
§1254(3)

CHAPTER 53 FINES

§1301 Amount authorized
§1301(1)-First paragraph
§1301(1)(A)
*§1301(1)(A-1)

COMMENT: This amendment authorizes the court to sentence a natural person convicted of a Class B crime to pay a fine not to exceed $10,000. An appropriate notation indicating this change should be made in the discussion of §1301(1) on page 18 of the February-March 1976 ALERT.

§1301(3) - First paragraph

***CHAPTER 55 CRIMINAL LAW ADVISORY COMMISSION**

COMMENT: This chapter authorizes the creation of an ongoing Criminal Law Advisory Commission "for the purpose of conducting a continuing study of the criminal law of Maine."

RELEVANT CRIMINAL AMENDMENTS OUTSIDE OF THE CRIMINAL CODE

The following amendments are to sections which are outside of Title 17-A but which are closely related to the Criminal Code.

12 M.R.S.A. §2953 Shooting human beings while hunting; penalty

The first and second sentences are repealed.

COMMENT: The effect of this amendment is to repeal the crimes which were previously contained in the statute entitled "shooting human being while hunting." The reason for the repeal is that most of those offenses are also violations of various sections of Title 17-A. For example, recklessly killing a human being while hunting would be a violation of 17-A M.R.S.A. §204(1)(A); negligently killing a human being while hunting would be a violation of 17-A M.R.S.A. §205; and recklessly wounding a human being while hunting would be a violation of 17-A M.R.S.A. §208. The only crime completely eliminated is negligently wounding a human being while hunting. This makes the law more consistent, since the negligent infliction of bodily injury is not criminal conduct under any other circumstances. It should be noted that the power of the Commissioner of Inland Fisheries and Wildlife to suspend a hunting license, after receiving a written report of the wounding or killing of a human being, is not affected by this amendment.

The following sections in Title 17 have been repealed by the Special Session: (An appropriate notation should be made in the Disposition Table beginning on page VII of the West Publishing Co. volume on the Criminal Code.)

§1461 Additional penalty for commission of a felony while carrying a firearm

§1952 Indecent liberties while armed with a firearm

§2302 Injunctions in lottery cases-Replaced by 17-A M.R.S.A. §958

§2303 Payments and securities for lotteries void and recoverable-Replaced by 17-A M.R.S.A. §958

§3704 Annoying telephone calls prohibited-Replaced by 17-A M.R.S.A. §506

The following statutes, which were to have been repealed by the Criminal Code, have been re-enacted by the Special Session. Appropriate notations should be made in the Disposition Table.

15 M.R.S.A. §1741 General penalty

17 M.R.S.A. §1055 Vivisection prohibited in public and private schools

17 M.R.S.A. §1058 Coloring or dyeing live animals or birds

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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