JULY-AUGUST 1977

ALERT

CRIMINAL DIVISION

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

MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

As you probably realize, we have fallen somewhat behind schedule in our recent issues of ALERT. This has resulted primarily from personnel changes. After many years of excellent service, both John Ferdico and Michael Seitzinger have left the Law Enforcement Education Section. John Ferdico is now pursuing a private writing career, and much of his writing will deal with law enforcement. Michael Seitzinger has become a member of the Appellate Section of the Criminal Division.

On the subject of personnel, William Stokes has been appointed an Assistant Attorney General and has been assigned to the Law Enforcement Education Section. Mr. Stokes previously served as a law clerk to Justice Archibald of the Maine Supreme Court.

Regarding the Criminal Code, this Office may not be able to obtain the funding to purchase copies of the 1977 Criminal Code pamphlet for Maine law enforcement officers. We are presently exploring less expensive methods of keeping officers updated on code changes. In the interim, it is imperative that you note the revisions described in the ALERT in your present copy of the code.

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

MAINE CRIMINAL CODE

1977 AMENDMENTS

This issue of the ALERT will cover two subjects. First, it will list and discuss the amendments to the Criminal Code which were enacted by the First Regular Session of the 108th Legislature. Second, it will explain how offenses outside the code are converted into either code crimes or civil violations.

The discussion of the amendments to the Criminal Code will follow the same format that was used in the April-May 1976 ALERT. All of the sections of the code that have been amended by the 108th Legislature will be listed. 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 is 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 previously in the code will be preceded by an asterisk (*).

When reading these amendments, law enforcement officers should consult their copies of the code and write in important changes. It is essential to keep in mind, however, that these amendments do not become effective until October 24, 1977.

PART ONE
GENERAL PRINCIPLES

CHAPTER 1 PRELIMINARY

§2 Definitions

§2(3)(A) Repealed

§§2(9) **Dangerous weapon**

A. "Use of a dangerous weapon" means the use of a firearm or other weapon, device, instrument, material or substance,

whether animate or inanimate, which, in the manner it is used or threatened to be used is capable of producing death or serious bodily injury.

B. "Armed with a dangerous weapon" means in actual possession, regardless of whether the possession is visible or concealed, of:

(1) A firearm;

(2) Any device designed as a weapon and capable of producing death or serious bodily injury; or

(3) Any other device, instrument, material or substance, whether animate or inanimate, which in the manner it is intended to be used by the actor, is capable of producing or threatening death or serious bodily injury. For purposes of this definition, the intent may be conditional.

C. When used in any other context, "dangerous weapon" means a firearm or any device designed as a weapon and capable of producing death or serious bodily injury.

D. For purposes of this subsection, a thing presented in a covered or open manner as a dangerous weapon shall be presumed to be a dangerous weapon.

COMMENT: The code now defines the terms, "use of a dangerous weapon" and "armed with a dangerous weapon." Accordingly, whenever these terms appear in the code, §2(9) should be consulted for the appropriate meaning. In addition, the term "deadly weapon" has been eliminated, since there is no difference between a deadly weapon and a dangerous weapon.

§2(10) "Dwelling place" means a structure which is adapted for overnight accommodation of persons, or sections of any structure similarly adapted. A dwelling place does not include garages or other structures, whether adjacent or attached to the dwelling place, which are used solely for the storage of property or structures formerly used as dwelling places which are uninhabitable. It is immaterial whether a person is actually present.

***§2(24) "Structure" means a building or other place designed to provide protection for persons or property against weather or intrusion, but does not include vehicles and other conveyances whose primary purpose is transportation of persons or property unless such vehicle or conveyance, or a section thereof, is also a dwelling place.**

COMMENT: These definitions are most important for purposes of the amended burglary statute. See §401 below. The effect of the above definitions and the changes in the burglary statute is that all burglaries will involve entering or surreptitiously remaining in a "structure." A dwelling place is defined simply as a particular type of structure.

§3 All crimes defined by statute: Civil actions
§3(1)(B)

§4 Classification of crime; civil violations
§4(1)

§4-A Crimes and civil violations outside the code
§4-A(1)(B)
§4-A(2)
§4-A(4)

COMMENT: See the discussion on conversion of crimes outside the code, which appears in a subsequent part of this ALERT.

§6 Application to crimes outside the code
§6(2) Repealed
§6(3) Repealed

§8 Statute of limitations
§8(2)

§9 Indictment and jurisdiction
§9(2)

§10 Definitions of culpable mental states
§10(3)(A), (B) and (C)
§10(4)(A), (B) and (C)

§15 Warrantless arrests by a law enforcement officer

§15(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) Murder;

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

***(3) Assault, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;**

***(4) Theft as defined in section 357, when the value of the services is $1,000 or less, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;**

***(5) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested; or**

***(6) Negotiating a worthless instrument, if the officer reasonably believes that the person will not be apprehended unless immediately arrested; and**

B. Any person who has committed in his presence or is committing in his presence a Class D or Class E crime other than those described in paragraph A, subparagraphs 3 through 6.

A law enforcement officer may, without fee, take the personal recognizance of any person for his appearance on a charge of a Class D or Class E crime.

COMMENT: This amendment is of considerable importance to law enforcement officers, since it increases their authority to make an arrest without a warrant for the following Class D and Class E crimes: Assault (§207-Class D); Theft of services (§357-Class D or Class E, depending upon the value of the services); Forgery (§703-Class D); and Negotiating a worthless instrument (§708-Class D).

Under present law, an officer may make a warrantless arrest for one of these offenses only if it is committed in his presence. Under the new §15(1), such an arrest is permitted if the officer has probable cause to believe that the person has committed or is committing the particular crime and reasonably believes that the additional circumstance set out in the statute also exists. For assault, the additional circumstance is a reasonable belief that the person may cause injury to others unless immediately arrested. For theft of services, forgery, and negotiating a worthless instrument, the additonal circumstance is a reasonable belief that the person will not be apprehended unless immediately arrested. Although the statute does not define "reasonably believes," it is suggested that officers treat that language as meaning "probable cause to believe."

The last sentence of §15(1) simply restates the already existing power of law enforcement officers to take the personal recognizance of any person charged with a Class D or Class E crime. The procedure to be followed is set out in 14 M.R.S.A. §5544.

§16 Warrantless arrests by a private person

§16(1)(A)

CHAPTER 3 CRIMINAL LIABILITY

§57 Criminal liability for conduct of others; accomplices

§57(6)

§58-A Intoxication

§58-A(1st ¶), (1) and (2)

§59 Procedure upon plea of not guilty coupled with plea of not guilty by reason of insanity

§59(3)

PART TWO SUBSTANTIVE OFFENSES

CHAPTER 7 OFFENSES OF GENERAL APPLICABILITY

§151 Conspiracy

§151(7)

§151(9)

§152 Attempt

*§152(3-A)

§152(4)

§153 Solicitation

§153(1) A person is guilty of solicitation if he commands or attempts to induce another person to commit **murder** or a particular Class A or Class B crime, whether as principal or accomplice, with the intent to cause the commission of the crime, and under circumstances which the actor **believes** make it **probable** that the crime will take place.

§153(3)

§153(4)

COMMENT: Officers should note the changes in the definition of solicitation since those changes affect the elements which must be established to prove the crime.

CHAPTER 9 OFFENSES AGAINST THE PERSON

INTRODUCTION: One of the major revisions of the code enacted during the past legislative session was the reorganization of the criminal homicide statutes. Simply stated, the six degrees of criminal homicide have been consolidated into the following four crimes: (1) Murder; (2) Felony murder; (3) Manslaughter; and (4) Aiding or soliciting suicide. In addition to reducing the number of offenses from six to four, the Legislature restored to these crimes their traditional names. Each of the new homicide statutes will be set out in full and will be briefly discussed.

§201 Murder

1. A person is guilty of murder if:

A. He intentionally or knowingly causes the death of another human being;

B. He engages in conduct which manifests a depraved indifference to the value of human life and which in fact causes the death of another human being; or

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

2. The sentence for murder shall be as authorized in chapter 51.

COMMENT: The new murder statute replaces criminal homicide in the 2nd degree (formerly §202). Furthermore, the offense of criminal homicide in the first degree (formerly §201) is eliminated.

The most important change in the definition of the crime is the addition of paragraph B. Under this paragraph, a person can be guilty of murder even if he does not intend to cause death or know that death will almost certainly result from his conduct. It is sufficient if the person causes death by engaging in conduct which "manifests a depraved indifference to the value of human life." Although this term cannot be given a precise definition, any evidence which suggests that the person acted with a depraved indifference to the value of human life is relevant to a homicide investigation. One example might be evidence that the person inflicted great physical

suffering on his victim. Another example might be evidence that the person engaged in conduct which created a substantial risk of death to a large number of individuals.

The penalty for murder (see §1251 below) is imprisonment for life or for any term of years that is not less than 25.

§202 Felony murder

1. A person is guilty of felony murder if acting alone or with one or more other persons in the commission of, or an attempt to commit, or immediate flight after committing or attempting to commit murder, robbery, burglary, kidnapping, aggravated arson, arson, rape, gross sexual misconduct, or escape, he or another participant in fact causes the death of a human being, and such death is a reasonably foreseeable consequence of such commission, attempt or flight.

2. It is an affirmative defense to prosecution under this section that the defendant:

A. Did not commit the homicidal act or in any way solicit, command, induce, procure or aid the commission thereof;

B. Was not armed with a dangerous weapon, or other weapon which under circumstances indicated a readiness to inflict serious bodily injury;

C. Reasonably believed that no other participant was armed with such a weapon; and

D. Reasonably believed that no other participant intended to engage in conduct likely to result in death or serious bodily injury.

3. Felony murder is a Class A crime.

COMMENT: The new felony murder statute replaces criminal homicide in the 3rd degree (formerly §203). The old and new laws contain essentially the same elements with one important exception. A person could be guilty of criminal homicide in the 3rd degree only if he were committing, attempting to commit, or fleeing from a Class A crime or escape. The felony murder statute eliminates the Class A crime requirement and substitutes the offenses listed in subsection 1. Since a number of those offenses are not Class A crimes, the felony murder statute will apply to some killings which did not fall within the scope of criminal homicide in the 3rd degree.

§203 Manslaughter

1. A person is guilty of manslaughter if he:

A. Recklessly, or with criminal negligence, causes the death of another human being; or

B. Causes the death of another human being under circumstances which would otherwise be murder except that the actor causes the death while under the influence of extreme anger or extreme fear brought about by adequate provocation.

2. For purposes of subsection 1, paragraph B, provocation is adequate if:

A. It is not induced by the actor; and

B. It is reasonable for the actor to react to the provocation with extreme anger or extreme fear, provided that evidence demonstrating only that the actor has a tendency towards extreme anger or extreme fear shall not be sufficient, in and of itself, to establish the reasonableness of his reaction.

3. Manslaughter is a Class C crime if it occurs as the result of the reckless or criminally negligent operation of a motor vehicle; otherwise, manslaughter is a Class A crime.

COMMENT: The new manslaughter statute replaces criminal homicide in the 4th degree (formerly §204) and criminal homicide in the 5th degree (formerly §205). As a result, recklessly causing death and causing death through criminal negligence are now two different ways of committing manslaughter.

Section 203(1)(B) defines the crime commonly known as "voluntary manslaughter." It differs from the present law insofar as the phrase "under the influence of extreme mental or emotional disturbance" is replaced by "under the influence of extreme anger or extreme fear." In addition, the statute now contains a definition of "adequate provocation."

Under this amendment, manslaughter is a Class A crime except if it occurs as the result of the reckless or criminally negligent operation of a motor vehicle.

§204 Aiding or soliciting suicide

1. A person is guilty of aiding or soliciting suicide if he intentionally aids or solicits another to commit suicide, and the other commits or attempts suicide.

2. Aiding or soliciting suicide is a Class D crime.

COMMENT: This section replaces criminal homicide in the 6th degree (formerly §206). The elements of the offense are unchanged.

§205 Repealed

§206 Repealed

§208 Aggravated assault

§208(1)(B) **Bodily injury to another with the use of a dangerous weapon; or**

§210 Terrorizing

§210(2) **Violation of subsection 1, paragraph A, is a Class D crime. Violation of subsection 1, paragraph B, is a Class C crime.**

COMMENT: Officers should note that terrorizing, as defined in §210(1)(A), is reduced from a Class C crime to a Class D crime. As a result, a warrantless arrest for that offense may be made only if it is committed in the officer's presence. However, terrorizing which causes the evacuation of a building (see §210(1)(B)) remains a Class C crime.

CHAPTER 15 THEFT

§352 Definitions

§352(5)(E)

§354 Theft by deception

§354(2)(B)

§357 Theft of services

§357(3) and (4)

§362 Classification of theft offenses

§362(2)(C)

§362(3)(B)

CHAPTER 17 BURGLARY AND CRIMINAL TRESPASS

§401 Burglary

§401(1) A person is guilty of burglary if he enters or surreptitiously remains in a structure, knowing that he is not licensed or privileged to do so, with the intent to commit a crime therein.

§401(2)(B) A Class B crime if the defendant intentionally or recklessly inflicted or attempted to inflict bodily injury on anyone during the commission of the burglary, or an attempt to commit such burglary, or in immediate flight after such commission or attempt or if the defendant was armed with a **dangerous** weapon other than a firearm, or knew that an accomplice was so armed; or if the violation was against **a structure which is** a dwelling place;

§401(3)

COMMENT: The definition of burglary now refers solely to entering or remaining in a structure. Since the code defines "structure" (see §2(24) above), law enforcement officers should consult that definition to determine whether the place into which the person entered or in which he remained was in fact a structure.

§402 Criminal trespass

§402(1) A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so:

A. He enters in any secured premises;

B. He remains in any place in defiance of a lawful order to leave which was personally communicated to him by the owner or other authorized person; or

***C. He enters in any place in defiance of a lawful order not to enter which was personally communicated to him by the owner or other authorized person.**

§402(2)

COMMENT: Under the new §402(1)(C), the crime of criminal treaspass is extended to persons who enter in any place in defiance of a lawful order not to enter. The order must have been personally communicated to the individual by the owner of the place or other authorized person. If entry is made into secured premises, there is no requirement of a lawful order since the person would be in violation of §402(1)(A).

CHAPTER 19 FALSIFICATION IN OFFICIAL MATTERS

§454 Tampering with a witness or informant

1. A person is guilty of tampering with a witness or informant if, believing that an official proceeding, as defined in section 451, subsection 5, paragraph A, or an official criminal investigation is pending or will be instituted:

A. He induces or otherwise causes, or attempts to induce or cause, a witness or informant:

(1) To testify or inform falsely; or

(2) To withhold any testimony, information or evidence, which he knows the witness or informant is not privileged to withhold;

B. He uses force, violence or intimidation, or he promises, offers or gives any pecuniary benefit with the intent to induce a witness or informant:

(1) To withhold any testimony, information or evidence;

(2) To absent himself from any criminal proceeding or criminal investigation; or

(3) To absent himself from any other proceeding or investigation to which he has been summoned by legal process; or

C. He solicits, accepts or agrees to accept any pecuniary benefit in consideration of his doing any of the things specified in paragraph A, subparagraph (1), or in paragraph B, subparagraphs (1), (2) or (3).

2. Tampering with a witness or informant is a Class C crime.

COMMENT: This section has been entirely rewritten. It should be noted that §454(1)(A) is violated whenever the person attempts to bring about one of the results specified in that paragraph. By contrast, §454(1)(B) applies only if the person attempts to bring about one of the specified results through the use of force, violence or intimidation or through a promise, offer or giving of a pecuniary benefit. Unlike the prior law, §454 now prohibits attempts to induce a witness or informant to absent himself from a criminal proceeding or criminal investigation even if he has not been summoned to the proceeding or investigation by legal process. See §454(1)(B)(2).

CHAPTER 21 OFFENSES AGAINST PUBLIC ORDER

§501 Disorderly conduct

§501(4) Repealed

§509 False public alarm or report

***§509(1)(C) He knowingly gives or causes to be given false information concerning an emergency to any ambulance service, or to any government**

agency or public utility that deals with emergencies involving danger to life or property, with the intent of inducing such service, agency or utility to respond to the reported emergency, knowing such information to be false.

COMMENT: This amendment expands the prohibition against false public alarm or report to emergencies not already included in paragraph B. It applies to false information given to an ambulance service or to certain government agencies or public utilities with the intent to induce the service, agency or utility to respond to the reported emergency. It should thus cover the situation in which a person communicates a false accident report to a law enforcement agency with the intent to induce law enforcement officers to rush to the scene of the reported accident.

§510 Cruelty to Animals
§510(1)(C)

CHAPTER 23 OFFENSES AGAINST THE FAMILY

§556 Incest
***§556(1-A) It is a defense to a prosecution under this section that, at the time he engaged in sexual intercourse with the other person, the actor was legally married to the other person.**

COMMENT: This amendment stems from the fact that under Maine law it is possible for certain persons related within the 2nd degree of consanguinity to be lawfully married. Since marital status is made a defense and is not part of the definition of the crime, a law enforcement officer need not have probable cause to believe that the participants are not lawfully married in order to initiate criminal proceedings. It would be unfair, however, to initiate such proceedings if the officer believed that the participants were married, since the defense would be readily available. In such cases, further investigation, including a consultation with the prosecutor on any legal questions, should be undertaken before the commencement of a criminal action.

CHAPTER 29 FORGERY AND RELATED OFFENSES

§703 Forgery
§703(2)
§708 Negotiating a worthless instrument
§708(4)

CHAPTER 31 OFFENSES AGAINST PUBLIC ADMINISTRATION

§753 Hindering apprehension or prosecution
§753(2)
***§753(3) As used in subsection 1, "crime" includes juvenile offenses. The sentencing class for hindering the apprehension of a juvenile shall be determined in the same manner as if the juvenile were a person 18 years of age or over; provided that if the offense committed by the juvenile would not have been a crime if committed by a person 18 years of age or over, hindering apprehension is a Class E crime.**

COMMENT: This new subsection makes it clear that a person can be guilty of hindering the apprehension of an individual charged with, or liable to be charged with, a juvenile offense. Thus, if an adult harbors a juvenile with the intent to hinder his apprehension for a juvenile offense, the adult violates §753.

§754 Obstructing criminal prosecution
1. A person is guilty of obstructing criminal prosecution if:
A. He uses force, violence or intimidation, or he promises, offers or gives any pecuniary benefit to another, with the intent to induce the other:
(1) To refrain from initiating a criminal prosecution or juvenile proceeding; or
(2) To refrain from continuing with a criminal prosecution or juvenile proceeding which he has initiated; or
B. He solicits, accepts or agrees to accept any pecuniary benefit in consideration of his doing any of the things specified in this subsection.
2. This section shall not apply to conduct authorized by Title 15, section 891.
3. It is an affirmative defense to prosecution under this section that:
A. The charge in fact made or liable to be made was for a Class D or Class E crime or a comparable juvenile offense; and
B. The pecuniary benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for harm caused by the offense.
4. Obstructing criminal prosecution is a Class C crime.

COMMENT: The crime of obstructing criminal prosecution replaces the offense of compounding. It should be noted that §754 is similar to §454 (tampering with a witness or informant), which is reproduced above. The primary difference is that §454 applies to attempts to induce a witness or informant to testify falsely or withhold testimony at an official proceeding, whereas §754 prohibits certain attempts to induce another person not to bring or continue with a criminal prosecution or juvenile proceeding. Thus, if the evidence indicated that the person tried to cause a witness to lie or to withhold evidence, the appropriate statute would be §454; if the evidence indicated that a person used force or intimidation or promised a pecuniary benefit in order to induce another person not to bring criminal or juvenile charges, the appropriate statute

would be §754. While §454 includes all official proceedings, as well as criminal investigations, §754 is limited to criminal prosecutions and juvenile proceedings.

It should be noted that §754 does not apply to offers to settle complaints for assaults and certain other minor offenses, if those offers are made pursuant to 15 M.R.S.A. §891. In addition, it is an affirmative defense that the person promised, offered or gave a pecuniary benefit in an amount which he believed due as restitution for the offense and that the offense was a Class D or Class E crime. Although an affirmative defense must be raised and proven by the accused, criminal proceedings obviously should not be brought when the officer and prosecutor believe that a valid affirmative defense exists.

§755 Escape

§755(3) The second sentence of this subsection is repealed.

COMMENT: Because this amendment makes escape a criminal offense regardless of the age of the escapee, the act of a juvenile in leaving official custody becomes a juvenile offense as defined in the juvenile laws. In addition, the present juvenile escape statute, 15 M.R.S.A. §2719, is repealed.

§755(4) Escape is classified as:

A. A Class B crime if it is committed by force against a person, threat of such force, or while the defendant is armed with a dangerous weapon;

B. A Class D crime if the person escapes from arrest or escapes from custody while he is being transported to a jail, police station or any other facility enumerated in subsection 3, pursuant to an arrest, unless the escape is committed in the manner described in paragraph A; or

C. A Class C crime for all other escapes.

COMMENT: It is now a Class D crime to escape from arrest or to escape from custody while being transported to a detention facility pursuant to an arrest. This is somewhat similar to the old law which imposed a lesser penalty for breaking arrest than for other escapes. It should be emphasized that escape from arrest is a Class B rather than a Class D crime if it is committed by force against a person, threat of such force, or while the defendant is armed with a dangerous weapon.

§757 Trafficking in prison contraband

§757(2)

CHAPTER 33 ARSON AND OTHER PROPERTY DESTRUCTION

§801 Aggravated arson

§801(4) Repealed

§805 Aggravated criminal mischief

§805(1-B)

CHAPTER 37 FRAUD

§901 Deceptive business practices

§901(4) Deceptive business practices is a Class D crime.

CHAPTER 39 UNLAWFUL GAMBLING

§953 Aggravated unlawful gambling

§953(1)(A) Engaging in bookmaking to the extent that he receives or accepts in any 24-hour period more than 5 bets totaling more than $250; or

PART 3

PUNISHMENTS

CHAPTER 47 GENERAL SENTENCING PROVISIONS

§1152 Authorized sentences

§1152(1)
§1152(2)(A)
§1152(3)(A)
*§1152(2-A)

CHAPTER 49 PROBATION AND UNCONDITIONAL DISCHARGE

§1201 Eligibility for probation and unconditional discharge

§1201(1)
§1201(1)(A)

§1203 Split sentences

§1203(1)

§1204 Conditions of probation

§1204(2-A)(B), (K), (L) and *(M)
§1204(3)

§1205 Commencement of probation revocation proceedings

***§1205-A Preliminary hearing**

§1206 Court hearing on probation revocations

COMMENT: The statutes dealing with probation revocation (§1205, 1205-A, and 1206) have been entirely rewritten. While space limitations make it impossible to reproduce those statutes, the new provisions should be carefully studied by probation officers. One of the more important changes is the elimination of the requirement for a preliminary hearing for persons not arrested for the alleged violation.

CHAPTER 51 SENTENCES OF IMPRISONMENT

§1251 Imprisonment for murder

A person convicted of murder shall be sentenced to the State Prison for life or for any term of years that is not less than 25.

§1252 Imprisonment for crimes other than criminal homicide in the first or 2nd degree

§1252(1)
§1252(2-A) Repealed
§1252(3),*(3-A),(4), and *(6)

§1253 Calculation of period of imprisonment

§1253(2),(3), and *(3-A)

§1254 Release from imprisonment
§1254(2) Repealed

CHAPTER 53 FINES

§1301 Amounts authorized
§1301(1)(A-1),(B), and (C)
*§1301(4)

COMMENT: The maximum fines for natural persons have been increased as follows: $2,500 for a Class C crime, $1,000 for a Class D crime, and $500 for a Class E crime.

*CHAPTER 54 RESTITUTION

CONVERSION OF CRIMES OUTSIDE THE CRIMINAL CODE

A unique feature of the Criminal Code is a process for converting crimes in other Titles into either code crimes or civil violations. Since this conversion mechanism will take effect on October 24, 1977, it is essential that law enforcement officers understand how it works.

Conversion statutes: The two statutes which deal with crimes outside the code are §§4 and 4-A of Title 17-A. These provisions, as most recently amended, are set out below.

§4 Classification of crime; civil violations

1. Except for **murder**, all crimes defined by this code are classified for purposes of sentencing as Class A, Class B, Class C, Class D and Class E crimes.

2. A statute outside this code may be expressly designated as a Class A, Class B, Class C, Class D or Class E crime, in which case sentencing for violation of such a statute is governed by the provisions of this code.

3. A statute outside this code may be expressly designated as a civil violation. All civil violations are expressly declared not to be criminal offenses. They are enforceable by the Attorney General, his representative or any other appropriate public official in a civil action to recover what may be designated a fine, penalty or other sanction, or to secure the forfeiture that may be decreed by the statute. Evidence obtained pursuant to an unlawful search and seizure shall not be admissible in a civil violation proceeding arising under Title 22, section 2383.

§4-A Crimes and civil violations outside the code

1. This section shall become effective as follows:

A. For the sole purpose of determining the sentencing authority of the court under section 1, subsection 2, of the code, subsection 3 of this section shall become effective May 1, 1976; and

B. For all other purposes, this section shall become effective **90 days after the adjournment of the First Regular Session of the 108th Legislature.**

2. Statutes defining crimes which are outside the code are classified as civil violations or as Class A, Class B, Class C, Class D or Class E crimes according to the provisions of subsections 3 and 4, **provided that this section shall not apply to crimes defined in Title 12, Part 4.**

3. In statutes defining crimes which are outside this code and which are not expressly designated as Class A, Class B, Class C, Class D or Class E crimes, the class depends upon the imprisonment penalty that is provided as follows. If the maximum period authorized by the statute defining the crime:

A. Exceeds 10 years, the crime is a Class A crime;

B. Exceeds 5 years, but does not exceed 10 years, the crime is a Class B crime;

C. Exceeds 3 years, but does not exceed 5 years, the crime is a Class C crime;

D. Exceeds one year, but does not exceed 3 years, the crime is a Class D crime; and

E. Does not exceed one year, the crime is a Class E crime.

4. If a criminal statute **or criminal ordinance** outside this code prohibits defined conduct but does not provide an imprisonment penalty, it is hereby declared to be a civil violation, enforceable in accordance with the provisions of section 4, subsection 3.

Applicability of conversion to crimes outside the code: The conversion process applies to every crime outside the code which does not fall into one of the following categories.

Exceptions to Conversion

1. Crimes which are already expressly designated as Class A, Class B, Class C, Class D, or Class E crimes; or

2. Crimes in Title 12, Part 4 (violations of the Marine Resources laws); or

3. Crimes which are specifically exempted from conversion. These crimes generally contain the following, or a similar phrase: "notwithstanding the provisions of Title 17-A, section 4-A, the penalty for a violation of this section shall be . . . " When such language is used, it means that the crime is not changed by the coversion provisions of the Criminal Code.

How conversion works: Generally speaking, §4-A of the code will affect crimes defined in other Titles in one of two ways. If the crime presently has an imprisonment penalty, it will become a code crime (that is, a Class A, Class B, Class C, Class D, or Class E crime). If the crime does not have an imprison-

ment penalty, it will become a civil violation. In that case, the fine will simply become a civil penalty.

In applying the conversion mechanism to any given crime outside the code, law enforcement officers can use the following step-by-step process.

Step 1: Determine whether §4-A of the code applies to the crime or whether the crime falls into one of the three exceptions listed above.

Step 2: If §4-A applies, determine the maximum period of imprisonment authorized by the statute defining the crime. (If the crime is not punishable by imprisonment, it becomes a civil violation, and there is no need to proceed further.)

Step 3: Using the formulas in sub-§3 of §4-A, determine the classification of the crime under the code. It should be noted that this classification depends entirely on the maximum period of imprisonment provided for the crime. Thus, if that period is 11 months, it becomes a Class E crime. Similarly, if that period is 2 years, it becomes a Class D crime.

Step 4: Determine the new penalties for the crime by consulting §1252 (imprisonment) and §1301 (fines) of the code. The penalties for crimes converted by the code are no different from the penalties for code crimes of the same classification with one important exception. That exception aplies to crimes with mandatory sentences, in which case the penalties remain the same as they were under prior law.

Effect of conversion on arrest authority. Since the conversion process will decriminalize certain offenses and will reduce the penalties for others, it will occasionally affect the authority of law enforcement officers to make arrests. For offenses converted into civil violations, the arrest authority disappears entirely. For offenses punishable by one or more years of imprisonment which are converted into Class D or Class E crimes, the power to arrest without a warrant is limited to instances in which the offense is committed in the officer's presence. In short, officers should be aware of the fact that the conversion process may affect their powers as well as the penalty for the offense.

MAINE COURT DECISIONS

ARREST:
A § 1.3 Misdemeanors
A § 3.3 Authority
A § 3.5 Delay in Arrest
CRIMES/OFFENSES:
C § 1.2 Assault
C § 6.3 Speeding
C § 6.4 Procedure-Traffic Offenses
DEFENSES:
D § 3.6 Self-Defense
EVIDENCE:
E § 1.1 Sufficiency
E § 1.7 Flight

Defendant was convicted of speeding, 29 M.R.S.A. §1252, failing to stop for an officer, 29 M.R.S.A. §2121, and assault on an officer, 17 M.R.S.A. §2952. The police officer had clocked defendant's vehicle on radar at 49 mph on a street in Biddeford. A series of events ensued which culminated in an arrest in another town and resulted in the three charges being filed against defendant. The statute under which defendant was charged with speeding, 29 M.R.S.A. §1252(2)(c), prohibits speeds in excess of 25 mph "in a business or residential district, or buil(t)-up portion, as defined in subsection 3 . . . ." Sub-section 3 then defines "Compact or built-up portions" as municipal areas where structures are "situated less than 150 feet apart for a distance of at least 1/4 of a mile." The trial judge instructed the jury that the statute applied to three separate types of areas: business districts of whatever density, residential districts of whatever density, and "compact or built-up" areas of whatever type.

The Law Court reversed the speeding conviction, finding the judge's instructions were in error. After examining the language, punctuation and history of the statute at some length, the court determined that the applicability of the 25 mph speed limit should be based solely on the density of a particular area and not the nature of the buildings or activity in the area.

The court then reviewed the evidence on the charge of failing to stop for an officer and found it sufficient to support a finding that defendant had perceived the officer's sirens and flashing lights and had deliberately continued in his vehicle.

Finally, defendant contended that his assault on the officer was justified because he was resisting an unlawful arrest effected outside the officer's jurisdiction. The statute relied upon by defendant, 30 M.R.S.A. §2364, authorizes misdemeanor arrests outside the officer's jurisdiction only when the officer is in "instant pursuit of a person with intent to apprehend." The Law Court disagreed with defendant's contention that the officer was not in "instant pursuit." The officer undertook to make an arrest as soon as he observed the misdemeanor being committed, and the delay in effecting the arrest was caused by defendant's own evasive actions. Under the circumstances, the officer's actions could not have been more instantaneous. **State v. Fitanides,** 373A.2d 915 (Supreme Judicial Court of Maine, May 1977)

CONFESSIONS/SELF-INCRIMINATION:
B § 1.1 Voluntariness
B § 2.3 Evidence

DEFENDANT'S RIGHTS: D § 1.1 Counsel-Pretrial

Defendant was convicted of two counts of breaking, entering and larceny and one count of breaking and entering with intent to commit larceny. On appeal he contested the voluntariness of his confession.

The Law Court sustained the appeal. The confession was given under the following circumstances. Defendant was a suspect in a series of three breaks but was not apprehended. More than a week following the breaks, defendant appeared at the police station and requested to see a certain captain who was not then available. Defendant then requested and received a ride to and from an appointment. Upon returning to the police station, defendant had a discussion with the captain and a sergeant concerning the breaks but made no admissions at that time. The sergeant, while driving defendant home from the police station, stated to the defendant that the police "were willing to help him . . . that we would charge him with one break, if he were willing to clear up all the matters that he had pending." After hearing this statement, defendant agreed to return to the police station where he was given the **Miranda** warnings, following which he gave a full confession.

The Law Court characterized the sergeant's statement to defendant as "a positive promise that if he made a full confession, the number of offenses with which he was charged would be reduced to one." The court also noted that it was only after this promise was made that the defendant confessed. The fact that **Miranda** warnings were given did not cure the impropriety since the offciers did not attempt to retract the promise; nor did they ever inform him that they had no authority to decide how many charges would be brought against him. The court found, from the totality of the circumstances, that a promise of leniency was in fact made and that defendant relied upon that promise in making his confession. For that reason the confession was involuntary and inadmissible as a matter of law. **State v. Tardiff,** Decision No. 1488 (Supreme Judicial Court of Maine, June 20, 1977).

COMMENT: This case is instructive for two reasons. First, it makes clear that law enforcement officers have no authority to "make deals" with a criminal suspect in return for a confession. A confession must be the product of the defendant's free will. It cannot be induced by promises of leniency or reward. It should be noted that although the Tardiff *case involved a promise that was not fulfilled, this fact was not critical to the Court's decision. The improper conduct in* Tardiff *was that a promise was made and that the defendant relied upon it in making his confession. The same result would probably have followed even if the terms of the promise had been fulfilled.*

Secondly, the Tardiff *case illustrates the principle that the giving of* Miranda *warnings will not automatically cure prior improper conduct. In other words,* Miranda *cannot be used as a device whereby improper police conduct will be permitted to stand simply because* Miranda *warnings were given the accused at some point in time. Of course, the fact that the defendant received* Miranda *warnings will be considered by the court in determining whether his confession was given voluntarily. However, if a promise has been made to a criminal suspect, the wisest course of action for law enforcement officers to follow is to retract the promise and to advise the suspect, in unmistakable terms, that the officers have no authority to make such promises.*

Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Room 507 - State Office Building, Augusta, Maine 04333.

ALERT

This bulletin is partially funded by a grant from the Maine Criminal Justice Planning and Assistance Agency.