MARCH-APRIL 1978

ALERT

CRIMINAL DIVISION

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

CRIMINAL AND TRAFFIC LEGISLATION 1978 AMENDMENTS

MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

The March-April ALERT covers the most recent amendments to Maine's criminal and motor vehicle laws. While it does not include a discussion of the recently enacted Juvenile Code, we expect to devote our next issue entirely to that subject.

A recurring problem faced by the ALERT is the need to inform law enforcement officers of legislative changes well in advance of the effective date of those changes. This problem is particularly severe with respect to emergency legislation which takes effect when signed by the Governor. The difficulty stems partly from the format of the ALERT, insofar as its printing and distribution require a considerable period of time.

While our staff is always available to answer questions on legislation, we would welcome suggestions on how to develop a speedier system for communicating legislative changes to the law enforcement community. Ideas need not be limited to the ALERT, since it is possible that we might be able to use other resources to deal with this problem. Please send your suggestions to the Law Enforcement Education Section.

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

This issue of the ALERT deals with criminal and motor vehicle legislation enacted by the Second Regular Session of the 108th Legislature. Except where otherwise indicated, this legislation becomes effective July 6, 1978.

Included in the recent legislation are a number of amendments to the laws pertaining to marijuana. Since those laws have become rather complicated, this issue will also contain a brief discussion of how the various drug crimes apply to different fact situations involving marijuana.

CRIMINAL CODE AMENDMENTS

The discussion of the amendments to the Criminal Code will follow the same format that was used in the July-August 1977 ALERT. All of the sections of the Code that have been amended by the 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.

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 July 6, 1978.

PART I
GENERAL PRINCIPLES

CHAPTER I PRELIMINARY

§15 Warrantless arrests by law enforcement officers

§15(1) Except as otherwise specifically provided, a law enforcement officer may 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 while hunting;

(4) Any offense defined in chapter 45;

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

(6) 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;

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

(8) 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 any Class D or Class E crime.

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 statute was amended to give law enforcement officers the power to make a warrantless arrest, based upon probable cause, for the new Class D crime of assault while hunting. (The crime of assault while hunting is described below.) Since the warrantless arrest authority for drug offenses has also been incorporated into section 15, that section now contains all of the Criminal Code provisions dealing with warrantless arrests by law enforcement officers. It should be remembered, however, that there are statutes outside the Code which permit such arrests. For example, 29 M.R.S.A. §1312(11) (B) empowers officers to make a warrantless arrest for O.U.I. of any person involved in a motor vehicle accident, if the officer has probable cause to believe that the person was operating the vehicle in violation of §1312.

§17 Enforcement of civil violations

§17(2) (1st sentence)

Any person to whom a law enforcement officer is authorized to deliver a citation 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.

COMMENT: This amendment makes an extremely important change in the enforcement of civil violations. Whereas subsection 2 of section 17 was previously limited to the possession of marijuana, it now applies to all *civil violations. Thus, whenever a person to whom a law enforcement officer is authorized to deliver a civil violation citation intentionally and persistently fails or refuses to provide reasonably credible evidence of his name and address, the person is guilty of a Class E crime. In addition, the power to detain a suspected violator for a period not to exceed 2 hours, in order to verify his name and address, also applies to all civil violations.*

A more detailed explanation of the enforcement of civil violations can be found on pages 3 and 4 of the April-May 1976 ALERT. In reviewing that explanation, officers should keep in mind that subsections 2 and 3 of section 17 are no longer limited to the possession of marijuana.

CHAPTER 3 CRIMINAL LIABILITY

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

§59 (2) (B)

CHAPTER 9 OFFENSES AGAINST THE PERSON

***§208-A Assault while hunting**

1. A person is guilty of assault while hunting if, while in the pursuit of wild game or game birds, he, with criminal negligence, causes bodily injury to another with the use of a dangerous weapon.

2. Assault while hunting is a Class D crime.

COMMENT: This new offense is designed to deal with criminally negligent hunting accidents. The crime requires proof of the following elements: (1) That the defendant caused bodily injury to the victim; (2) That the defendant acted with criminal negligence; (3) That the defendant was in the pursuit of wild game or game birds; and (4) That the defendant caused the injury with the use of a dangerous weapon.

In investigating these cases, officers should recognize that if the defendant acted recklessly, and not just with criminal negligence, then the offense would be aggravated assault, as defined in 17-A

M.R.S.A. §208(2) (B). Similarly, if the defendant caused the victim's death, the crime would be manslaughter, as defined in 17-A M.R.S.A. §203 (1) (A).

§210 Terrorizing
§210 (1) (first ¶)
§210 (1) (A)

CHAPTER 15 THEFT

§361 Claim of right; presumptions
§361 (3)

CHAPTER 23 OFFENSES AGAINST THE FAMILY

§554 Endangering the welfare of a child
§554 (2) (B)

CHAPTER 31 OFFENSES AGAINST PUBLIC ADMINISTRATION

§752 Assault on an officer—
Repealed

***§752-A Assult on an officer**

1. A person is guilty of assault on an officer if:

A. He intentionally, knowingly or recklessly causes bodily injury to a law enforcement officer while the officer is in the performance of his official duties; or

B. While in custody in a penal institution or other facility pursuant to an arrest or pursuant to a court order, he commits an assault on a member of the staff of the institution or facility. As used in this paragraph "assault" means the crime defined in chapter 9, section 207.

2. A complaint for an assault on an officer may only be brought by the chief administrative officer of the law enforcement agency in which the officer against whom the assault was allegedly committed is a member.

3. Assault on an officer is a Class C crime.

COMMENT: In addition to renumbering the statute (§752 is replaced by §752-A), the Legislature has made four important changes in the crime of assault on an officer. First, the crime can now be committed recklessly, as well as intentionally or knowingly. Second, assault on a law enforcement officer, under paragraph A, does not include causing "offensive physical contact" to the officer. Thus, there must be proof that the defendant caused "bodily injury", as that term is defined in 17-A M.R.S.A. §2(5). Third, the penalty category for an assault on a law enforcement officer has been increased to Class C. Fourth, a complaint for this offense may be brought only by the chief administrative officer of the law enforcement agency of which the officer is a member.

This fourth change is likely to generate the most confusion. Until the courts have interpreted this change, it cannot be said with certainty what the requirement involves. It appears, however, that the Legislature intended to require the chief administrative officer to act as the complainant. This would mean that he would have to sign the complaint or an affidavit submitted in his capacity as complainant. Since the statute refers only to the bringing of the complaint, it would seem that the chief's participation would not be necessary once the case reached the grand jury. For the same reason, if the matter were initiated before the grand jury, without a complaint being brought, the involvement of the chief would apparently not be required.

It should also be noted that the statute does not define "chief administrative officer." To avoid problems on this point, the following practice is suggested. If the victim of the assault is a municipal police officer, the complaint should be brought by the Chief of Police; if the victim is a member of a sheriff's department, the complaint should be brought by the Sheriff; and if the victim is a State Police Officer, the complaint should be brought by the Chief of the Maine State Police.

Finally, unless the courts rule otherwise, the existence of §752-A does not prevent bringing a complaint for assault under 17-A M.R.S.A. §207, even when the victim is a law enforcement officer. This alternative might be used when the assault is of a relatively minor nature and when compliance with §752-A would prove unnecessarily burdensome.

CHAPTER 35 PROSTITUTION AND PUBLIC INDECENCY

§851 Definitions

§851 (2) (B) Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution shall include, but not be limited to, an offer, made in a public place, to engage in sexual intercourse or a sexual act, as defined in chapter 11, section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person; or

COMMENT: This amendment makes it clear that if a prostitute solicits patrons in a public place, the conduct falls within the definition of "promotes prostitution." Accordingly, the public solicitation of patrons by a prostitute violates 17-A M.R.S.A. §853 ("Promotion of prostitution"), which is a Class D crime. Officers should keep in mind that if the offer is not made in a public place, the conduct remains engaging in prostitution, which is a fine-only Class E crime under 17-A M.R.S.A. §853-A. Since the prostitution chapter does not define "public place", it would seem reasonable for officers to look to the definition in 17-A M.R.S.A. §501(5) for guidance.

CHAPTER 45 DRUGS

§1101 Definitions

§1101 (17) (D) To possess with the intent to do any act mentioned in paragraph C, except that possession of **2 pounds or less of** marijuana with such intent shall be deemed furnishing.

COMMENT: Prior to this amendment, possession of any amount of marijuana with the intent to sell or to furnish it for consideration was deemed to be furnishing. That rule remains in effect only if the amount of marijuana is 2 pounds or less. If the person possesses more than 2 pounds with the intent to sell the marijuana or furnish it for consideration, his conduct is now defined as trafficking. The reason for this change should become clear when the amendments to §1103 are discussed below.

§1102 Schedules W, X, Y and Z

***§1102(1) (J) Phencyclidine**

§1102(2) (C) (9)—Repealed

§1102(2) (K) **Diethylpropion or its salts.**

§1102(3) (T)—Repealed

COMMENT: The effect of these amendments is to raise phencyclidine (sometimes referred to as PCP) from Schedule X to Schedule W and to raise diethylpropion (sometimes referred to as tenuate) or its salts from Schedule Y to Schedule X.

§1103 Unlawful trafficking in scheduled drugs

§1103(2) Violation of this section is:

A. A Class B crime if the drug is a schedule W drug **or if it is marijuana in a quantity of 1,000 pounds or more;**

B. A Class C crime if the drug is a schedule X drug **or if it is marijuana in a quantity of more than 2 pounds;** or

C. A Class D crime if the drug is a schedule Y or schedule Z drug.

***§1103(3) A person shall be presumed to be unlawfully trafficking in scheduled drugs if he intentionally or knowingly possesses more than 2 pounds of marijuana.**

COMMENT: Prior to these amendments, trafficking in any amount of marijuana was a Class D crime. As §1103 is now written, the penalties for trafficking are as follows: if the amount of marijuana is 2 pounds or less, trafficking is a Class D crime; if the amount of marijuana is more than 2 pounds but less than 1,000 pounds, trafficking is a Class C crime; and if the amount of marijuana is 1,000 pounds or more, trafficking is a Class B crime. Thus, the penalty is directly related to the quantity involved.

The enactment of section 1103, subsection 3 adds another presumption to the laws dealing with marijuana. Under that subsection a person is presumed to be trafficking if he intentionally or knowingly possesses more than 2 pounds of marijuana. Since the definition of trafficking now includes possession of more than 2 pounds with the intent to sell, proof that the person intentionally or knowingly possessed more than 2 pounds of the drug should be sufficient to establish a prima facie case of trafficking. Of course, if there is additional evidence which shows that the person did not intend to sell the drug, then he should not be charged with trafficking, even though the amount in his possession exceeded 2 pounds.

§1107 Unlawful possession of schedule W, X and Y drugs

§1107(2) **Violation of this section is:**

A. A Class C crime if the drug is heroin (diacetylmorphine);

B. A Class D crime if the drug is a schedule W drug other than heroin (diacetylmorphine) or a schedule X drug; or

C. A Class E crime if the drug is a schedule Y drug.

COMMENT: The only effect of this amendment is to increase the penalty classification for possession of heroin from Class D to Class C.

§1113 Inspection of records

PART 3
[Punishments]

CHAPTER 47 GENERAL SENTENCING PROVISIONS

§1157 Criminal history reports

CHAPTER 49 PROBATION AND UNCONDITIONAL DISCHARGE

§1203 Split sentences

§1204 Conditions of probation

§1204(1)

§1204(2-A) (¶F)

CHAPTER 51 SENTENCES OF IMPRISONMENT

§1253 Calculation of period of imprisonment

§1253 (1)

§1253 (2)

*****§1253 (3-B)

*****§1253 (5)

AMENDMENTS TO LAWS OUTSIDE THE CRIMINAL CODE

This section of the ALERT will discuss important amendments to the laws outside the Criminal Code. Although for technical reasons the following bills are labeled as chapters within the "Public Laws of 1977," they were all enacted in 1978.

I. Child Pornography Legislation

Chapter 628 of the Public Laws of 1977 creates two new offenses designed to deal with the problem of child pornography. These offenses are sexual exploitation of a minor (17 M.R.S.A. §2922) and dissemination of sexually explicit materials (17 M.R.S.A. §2923).

The conduct which constitutes sexual exploitation of a minor is set out in section 2922, subsection 1 in the following manner:

> 1. Offense. A person is guilty of sexual exploitation of a minor if:
>
> A. Knowing or intending that the conduct will be photographed for commercial use, he intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, who is in fact a minor, to engage in sexually explicit conduct; or
>
> B. Being a parent, legal guardian or other person having care or custody of another person, who is in fact a minor, he knowingly or intentionally permits that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed for commercial use.

Sexual exploitation of a minor is a Class B crime unless the State pleads and proves a prior conviction, in which case it becomes a Class A crime.

In order to understand the elements of this offense, it is necessary to consult the definitions in 17 M.R.S.A. §2921. Thus, a "minor" is defined as a person under 16 years of age. "Sexually explicit conduct" includes any of the following acts: (1) Sexual intercourse or sexual act, as defined in the Criminal Code; (2) Bestiality; (3) Masturbation; (4) Sadomasochistic abuse for the purpose of sexual stimulation; (5) Conduct that creates the appearance of any of the above acts and also exhibits uncovered portions of the genitals or pubic area; and (6) Lewd exhibition of the genitals or pubic area of a person.

Generally speaking, section 2922 is designed to reach the person who employs or uses a minor to engage in sexually explicit conduct in the commercial production of pornographic materials. By contrast, section 2923 punishes the individual who disseminates these materials.

The elements which constitute dissemination of sexually explicit materials are set out in section 2923, subsection 1.

> 1. Offense. A person is guilty of dissemination of sexually explicit materials if he intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material which:
>
> A. Depicts any minor, whom the person knows or has reason to know is a minor, engaging in sexually explicit conduct;
>
> B. To the average individual, applying contemporary community standards, considered as a whole, appeals to the prurient interest; and
>
> C. Considered as a whole, lacks serious literary, artistic, political or scientific value.

As defined in 17 M.R.S.A. §2921, disseminate means, "for consideration, to manufacture, publish, distribute, exhibit, print, sell or transfer possession or to offer or agree to do any of these acts." Dissemination of sexually explicit materials is a Class C crime, unless the State pleads and proves a prior conviction, in which case it becomes a Class B crime.

In dealing with this section, there are two points which officers should bear in mind. First, the statute creates a presumption to the effect that if a person possesses 10 or more copies of the **same** sexually explicit material, he is presumed to possess that material with the intent to disseminate it. Second, material violates this section only if it falls within the constitutionally permited definition of obscenity. Since that determination requires knowledge of the relevant principles of constitutional law, close cooperation between officers and prosecutors will be necessary in the enforcement of this statute.

Along with the enactment of the provisions discussed above, the Legislature passed a more general law dealing with the publicity given sexual offenses in which the victims are minors. Since that law (30 M.R.S.A. §508) is directed at law enforcement officials, it is important that they become aware of its contents.

> **§508. Disclosure of minor victims of sexual offenses.** The Legislature finds that publicity given to the identity of minor victims of sexual offenses causes intense shame and humiliation for which abused children are particularly ill-prepared and may cause severe and permanent emotional harm to the victim of such an offense.
>
> The Legislature therefore declares its intent that district attorneys, their assistants and employees and other law enforcement officials refrain from any unnecessary pretrial public disclosure of information that may identify a minor victim of an offense under Title 17, chapter 93-B, Title 17-A, chapter 11 or Title 17-A, section 556.

This statute applies to the following crimes: sexual exploitation of a minor; dissemination of sexually explicit materials; the sex offenses in Chapter 11 of the Criminal Code; and incest.

II. Trespass by animals

A new civil violation has been created to deal with the problem of "trespassing" animals. **See** P.L. 1977, c. 671, §18-A. The statute (17 M.R.S.A. §3853-B) establishes the following prohibition:

> 1. Prohibition. A person commits a civil violation if any animal, owned by him or subject to his control, enters on the property of another after the person had been previously warned by a law enforcement officer or a justice of the peace that an

animal, owned by him or subject to his control, was found on the property of another. A person shall not be liable under this section if, at the time of the alleged trespass, he was licensed or privileged to allow the animal to be on the property.

For a violation of §3853-B, the court may order a forfeiture not to exceed $50 and may require the owner to make restitution for any damage caused by the animal.

An important feature of the statute is the requirement that the owner must have been warned, on a prior occasion, that one of his animals was found on the property of another. Along with justices of the peace, law enforcement officers are authorized to issue such warnings. Although not mandated by the statute, written warnings would minimize the possibility of disputes in the event that an action were subsequently brought under this section. Apart from the warning requirement, section 3853-B is to be enforced in the same manner as other civil violations.

III. Use of "Breathalyzers"

An amendment to the OUI statute (P.L. 1977, c.603) authorizes an alternative method for giving breath tests to persons arrested for operating under the influence. This method involves the use of what is called a self-contained, breath-alcohol testing apparatus. The most common of these machines is the Breathalyzer. Under the amendment, the apparatus may be used with the consent of the arrested person if it is reasonably available.

The amendment also calls for approval of these machines by the Department of Human Services. Thus, officers should not use self-contained, breath-alcohol testing equipment unless it bears a stamp of approval affixed by the Department. Since the stamp of approval will be valid for a limited period of no more than one year, it will be necessary to make sure that the approval has not expired at the time the test is to be administered. Finally, the Legislature intended the self-contained, breath-testing apparatus as an **alternative** to the breath kits; the statute still allows officers to use those kits.

IV. Other OUI Amendments

P.L. 1977, c. 626 contains a number of other amendments to the OUI statute. Since most of these amendments simply clarify the penalty and license suspension provisions enacted last year, they are not of immediate concern to law enforcement officers.

One provision of the bill is, however, extremely important to law enforcement officers. That provision restores their authority to arrest, without a warrant, any person involved in a motor vehicle accident, if there is probable cause to believe that the person has violated the OUI statute. Since chapter 626 was emergency legislation, this authority to make probable cause arrests in accident cases took effect on March 8, 1978.

V. Registration of Special Equipment

Last session, the Legislature passed a bill which required that special equipment be registered with the Motor Vehicle Division. As defined in 29 M.R.S.A. §1(13-A), special equipment generally refers to wheeled equipment which is towed. It includes, but is not limited to, air compressors, conveyors, cement mixers, wood splitting or sawing machines, sprayers, compactors, pumps, drills and brush chippers.

As a result of an amendment enacted this session (P.L. 1977, c. 696, §213), special equipment used for certain limited purposes is exempted from the registration requirement. That amendment to 29 M.R.S.A. §242-A provides as follows:

> No registration shall be required of special equipment when the same is used solely on that part of a way adjoining the premises of the owner of the special equipment or when used solely for farm purposes, and highway use is limited to travel from or to the premises where the same is kept, to or from a farm lot and between farm lots used for farm purposes by the owner of the special equipment. Special equipment used solely for farm purposes may also be operated without registration to and from a filling station or garage for gas, oil or repairs.

The above amendment became effective March 31, 1978.

VI. Right Turn on Red Light

An amendment to 29 M.R.S.A. §947(3) (C) makes it clear that vehicles must stop before making a right turn on a red light. Thus, the relevant part of that law now reads:

> All vehicular traffic facing a steady circular red signal at an intersection may cautiously enter the intersection to make a right turn **after stopping** as required by paragraph A, unless such a turn is prohibited by an appropriate sign such as "NO RIGHT TURN ON RED."

Along with the law authorizing right turns on red lights, this amendment (P.L. 1977, c. 696, §216) became effective May 1, 1978.

DISCUSSION OF MARIJUANA STATUTES

Recent amendments have increased the complexity of the statutes dealing with marijuana. To assist law enforcement officers to understand these statutes, this part of the ALERT will give examples of

how the various offenses involving marijuana apply to different fact situations. Because of space limitations, these situations have been kept relatively simple. In actual cases, the decision of what offense to charge (as well as whether to charge) must be based upon all of the information known at the time. Depending upon local practice, this decision should be made in consultation with the Office of the District Attorney or under guidelines established by that Office.

In reading the examples which deal with trafficking or furnishing, officers should remember that the crime becomes aggravated trafficking or furnishing when the recipient of the marijuana is less than 16 years of age. **See** 17-A M.R.S.A. §1105. This crime is one class more serious than the trafficking or furnishing would otherwise be.

1. Possession of Marijuana

The offense is possession of marijuana, a civil violation under 22 M.R.S.A. §2383, when the evidence shows that the person:

(a) Possessed marijuana, **regardless of amount**, for his own use, without any intent to sell it or give it away; or

(b) Possessed 1 1/2 ounces or less of marijuana, and there is no clear evidence as to whether the drug was possessed for personal use or for some other purpose.

2. Furnishing Marijuana

The offense is furnishing marijuana, under 17-A M.R.S.A. §1106, when the evidence shows that the person:

(a) Actually gave marijuana, **regardless of amount,** to another individual; or

(b) Possessed marijuana, **regardless of amount**, with the intent to give it to another individual; or

(c) Possessed 2 pounds or less of marijuana with the intent to sell it; or

(d) Possessed more than 1 1/2 ounces, but not more than 2 pounds, of marijuana, and there is no clear evidence as to what the person intended to do with the drug. This type of case requires the most scrutiny since it must be determined whether the statutory presumption (that possession of more than 1 1/2 ounces creates an inference of an intent to furnish) will be sufficient for a conviction. Examples of additional factors to consider are the amount by which the marijuana exceeded 1 1/2 ounces, where the drug was found, and whether it was kept in one container or in separate packages. In short, the mere fact that the weight exceeded 1 1/2 ounces should not automatically lead to a furnishing charge.

3. Class D Trafficking

The offense is Class D trafficking, under 17-A M.R.S.A. §1103(2)(C), when the evidence shows that the person actually sold 2 pounds or less of marijuana.

4. Class C Trafficking

The offense is Class C trafficking, under 17-A M.R.S.A. §1103 (2)(B), when the evidence shows that the person:

(a) Sold more than 2 pounds, but less than 1,000 pounds, of marijuana; or

(b) Possessed more than 2 pounds, but less than 1,000 pounds, of marijuana with the intent to sell it; or

(c) Possessed more than 2 pounds, but less than 1,000 pounds, of marijuana, and there is no clear evidence as to what he intended to do with the drug. Once again, the mere fact that the person intentionally or knowingly possessed more than 2 pounds of marijuana should not automatically lead to a charge of Class C trafficking. All of the evidence should be reviewed to determine whether the presumption will be sufficient to establish the intent to sell.

5. Class B Trafficking

The offense is Class B trafficking, under 17-A M.R.S.A. §1103(2)(A), when the evidence shows that the person:

(a) Actually sold 1,000 pounds or more of marijuana; or

(b) Possessed 1,000 pounds or more of marijuana with the intent to sell it; or

(c) Possessed 1,000 pounds or more of marijuana, and there is no clear evidence as to what he intended to do with the drug. In this instance, there is less cause for concern about the sufficiency of the statutory presumption to prove the intent to sell. Unless there is evidence to the contrary, the large quantity of marijuana involved should be adequate to establish that element.

ITEMS OF INTEREST

The following notice is published at the request of Assistant Attorney General Richard Howard. Any questions concerning the contents of this notice should be addressed to Mr. Howard at 289-2232.

Authority to Detain Mentally Ill Persons

A number of questions have come up regarding the authority of law enforcement officers to detain and transport persons whom they believe to be mentally ill. The authority to do so is provided in 34 M.R.S.A. §2332-A, which is quoted below. Officers should also be aware that once a psychiatrist or psychologist has certified the person to be mentally ill and dangerous, and a judge or complaint justice has endorsed the certificate, the officer has authority to transport the mentally ill person to a hospital.

The authority to restrain and transport an alledgedly mentally ill person is provided as follows:

Any law enforcement officer in the State having reasonable grounds to believe, based upon his personal observation, that any person may be a mentally ill individual and that due thereto he presents a threat of imminent and substantial physical harm to himself or to other persons, may take such person into protective custody and, in any such case, shall deliver such person forthwith for examination by an available licensed physician or licensed psychologist as provided for in section 2333.

In the event that a certificate relating to the person's likelihood of serious harm shall not be executed by the examiner under section 2333, the officer shall release the person from protective custody, and, with the permission of such person, shall return this person forthwith either to his place of residence, if within the territorial jurisdiction of the officer, or to the place where such person was taken into protective custody; provided that, if such person is also then under arrest for a violation of law, he shall be retained in custody until released in accordance with the law. In the event that the examiner shall execute the certificate provided for under section 2333, the officer having protective custody of the person examined shall have authority to detain him for a reasonable period of time not to exceed 18 hours pending endorsement by a judicial officer provided for under section 2333; provided that the officer shall undertake to secure such endorsement forthwith upon execution of the certificate by the examiner.

Costs of transportation furnished under this section shall be paid as are costs of transportation provided under section 2333.

CHILD ABUSE AND NEGLECT WORKSHOPS

Two-day workshops on child abuse and neglect designed specifically for law enforcement officers will be conducted in various locations in the northern half of the State this summer. These workshops are being sponsored by the Maine Criminal Justice Academy and the Maine Department of Human Services. Appropriate training credits and certificates will be awarded to participants.

The workshops will cover identification, investigation and referral of abuse/neglect cases, as well as the roles to be played by law enforcement personnel, protective services and the courts in handling these matters. A goal of the workshops will be to improve communication and cooperation between law enforcement agencies and protective services in child abuse/neglect cases. Faculty will consist of law enforcement officers, child protective services staff and attorneys from the region in which each workshop is offered.

The workshops will be offered on the following dates and at the following locations with specific facilities to be announced.

Location	Date
Van Buren	June 21-22
Presque Isle	July 19-20
Machias	August 9-10
Waterville	August 15-16
Rockland	August 24-25
Bangor	August 29-30

These workshops will be identical to those offered in the Portland and Lewiston areas last winter. There will be no charge for the workshops, and lunch will be provided. Interested officers should contact Laura Carey at the Academy at 289-2788.

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 04333.

ALERT

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