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Final Report on Penalties Outside the Criminal Code, Volume One

Maine State Legislature

Office of Policy and Legal Analysis

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**STATE OF MAINE
114TH LEGISLATURE
SECOND REGULAR SESSION**

Final Report

**PENALTIES OUTSIDE THE
CRIMINAL CODE**

Volume One

**Staff Report
to the**

**Joint Standing Committee
on Judiciary**

November 1990

Staff:

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**PENALTIES OUTSIDE THE CRIMINAL CODE
VOLUME ONE**

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II. CRIMES

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III. CIVIL VIOLATIONS

- A. By title and section
- B. By sanction
- C. By category

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I. BACKGROUND

During the 1989 Legislative interim, the Subcommittee of the Joint Standing Committee on Judiciary studying court jurisdiction recommended that a one-year commission be formed to look at penalties contained in the Maine statutes, but located outside of the Criminal Code (Maine Revised Statutes Annotated, Title 17-A). The idea of a review of all the criminal penalties had been informally discussed for several years, but the Subcommittee was the first study group to include the proposal as a formal recommendation for action. The main purpose of the review was to determine if penalties are appropriate in severity for the offense, particularly in relation to other criminal offenses. (*Final Report of the Court Jurisdiction Study*, January 1990, Recommendation 10, page 24. See Appendix A.) The Subcommittee recommended that a Legislative Commission be established, with representatives from the following joint standing committees: Judiciary; Transportation; Fisheries and Wildlife; and Marine Resources. (See L.D. 2328, Part B. See Appendix A.) The Judiciary Committee supported the concept, and added two members of the Joint Standing Committee on Legal Affairs to the commission membership. (See Committee Amendment "A" to L.D. 2328, H-1077.) Because of budget constraints, however, the Legislature determined that funding a legislative study of criminal penalties would not be the best use of limited resources. The Legislative Council instead approved the review of penalties as a staff research study, to be undertaken by the Office of Policy and Legal Analysis. (See letter from Chair of the Legislative Council to Judiciary Committee Chairs, dated April 10, 1990. Appendix A.)

This report is the product of the staff research study, undertaken by Margaret J. Reinsch and Jill Ippoliti of the Office of Policy and Legal Analysis.

II. INTRODUCTION

This report is simply an ordered compilation of over 1,600 statutory provisions which prescribe consequences, either criminal or civil, for various actions or activities. The purpose of this report is solely to present information regarding criminal and civil penalties; no recommendations for actions based on the information are made or intended.

Although the assignment required the review of only criminal statutes, this report includes data regarding civil forfeitures, civil penalties and other civil sanctions to assist in comparisons of consequences for similar offenses. By including the civil provisions, the information in the data base created for this study facilitates a more comprehensive review of the Maine statutes, as well as provides useful information for legislators considering whether new prohibitions and penalties are necessary.

Penalties contained in the fish, game and marine resources laws (Title 12, chapters 419, 420, 601 - 627, and 701 - 721) are included in charts separate from the rest of the statutes. (See Volume Two, Section IV.) The separation is in response to the need to understand possible differences in philosophies underlying the imposition of penalties for engaging in proscribed conduct. Integration of the fish, game and marine resources sanctions into the general data base is possible and can be easily accomplished should the Legislature determine that combining the data would be useful.

The data will be retained on file, and further sorting and analysis of the data are possible.

Volume One of this report contains an explanation of the staff study, a summary of the data collected, and Appendices. Volume Two consists of twelve charts, encompassing the data collected for this study.

III. EXPLANATION OF INFORMATION COLLECTED

A. Collection of data

Staff members collected individual statutory provisions by reading the statutory data base printout, which was current through the end of the First Special Session of the 114th Legislature. All public law chapters enacted in the Second Regular Session of the 114th Legislature were also read and included. Each section which prescribed particular sanctions was included in a chart of pertinent information. Although this examination of the Maine Revised Statutes was thorough, some civil or criminal penalties may have been overlooked inadvertently. The small number of possible omissions is outweighed by the vast number of provisions collected, analyzed and summarized in this report, and should not affect any conclusions the Judiciary Committee draws from the data.

A statutory provision is included in this report if it prescribes civil or criminal consequences for an act or for failure to perform a duty. Statutes which refer to a private cause of action are not included unless the statute provides for a specific penalty or method of calculating the penalty, damages or other remedy. For example, cutting Christmas trees on another's land without permission would not be part of the data collected except that the statute (14 MRSA §7552) provides for triple damages.

When a statutory provision was selected as appropriate data for this study, several pieces of information were written on a form. That information was then entered into a data base to enable sorting by various identifying information. The same process was followed for each section containing criminal or civil sanctions.

The provision's title and section, and, where appropriate, the subsection, were noted, along with a short (up to 30 characters) description of the conduct in question. Each provision was also assigned to a subject matter category, and, in some cases, a subcategory. The categories were established to be able to group statutes together which provide consequences for related conduct, (e.g., giving false information) or for conduct concerning a specific area (e.g., motor vehicle license violations).

Each section is characterized as criminal or civil. For the purposes of this study, a provision is considered criminal if it specifically states that it is a Class of crime, if it states that it is a crime without assigning a Class, or if it provides for any term of imprisonment; all others fall into the civil classification. Note that there are 90 sections which provide for criminal and civil sanctions (see Title 38, section 349, for example); these sections are considered both criminal and civil, and are included in both sets of charts.

If a criminal provision explicitly assigns a Class to the crime (i.e., Class A, B, C, D or E), that designation was included. If the statute uses one of the old terms "misdemeanor" or "felony," that designation is included as a Class of crime. If a criminal provision provides for a specific fine or range of fines, or a specific term or range of terms of imprisonment, that information was included as well. If a provision provides for a monetary remedy only, it was considered a civil provision, and the information was recorded in the columns for civil violations. (Title 17-A, section 4-B, subsection 3, provides that all statutes which prohibit defined conduct but which do not provide for imprisonment are civil violations.) If civil consequences other than monetary remedies are possible (such as return or repair of property), an entry was made in the "other" column under civil violations to indicate that the statute does contemplate specific sanctions.

If the statutory section lists any state of mental culpability (e.g., "knowingly"), the term or terms were recorded. Finally, any cross references to other statutory sections were listed. This information is necessary in understanding the legislative intent behind some sections which deviate from the uniform sentencing provisions of the Criminal Code. In other situations, the cross references are useful in understanding how several sections work together.

Section III, B, explains the information in the charts in more detail, while the charts themselves are located in Volume Two of this report. Sample pages are located in Appendix D of this Volume.

B. Specific chart columns

1. SUBJECT

A short description accompanies each title and section entry in SUBJECT column in the charts. That description is intended to convey the general concept of the conduct or activity proscribed or punished. In a few situations, it is necessary to be cognizant of the Title in which the statute is located to understand the prohibition. The description indicates the basic conduct or activity covered by that statute, but, because of lack of space (30 characters maximum), not all the details of what is actually prohibited or actionable. If more than one activity is included in the statute with differing consequences, each consequence was entered separately as an individual line entry. The information in the charts should not be relied on as definitions of crimes or civil violations.

2. CATEGORY AND SUBCATEGORY

The CATEGORIES AND SUBCATEGORIES are based, as far as practical, on chapter/subject headings within the Maine Criminal Code. Because the Criminal Code does not address all statutorily proscribed activities, additional categories and subcategories were created. Categorizing the provisions is inherently subjective to a certain extent. For example, pesticide application violations could be considered agriculture regulation provisions by some researchers, and protection from pollution by others. (They are listed here under "land use.") The categories and subcategories were developed and assigned solely as aids to sorting and understanding the statutes from a cumulative perspective; no critique or value is intended by including any provision in any particular category or subcategory. As each provision must be placed into some subject area, not every fit is perfect, and some categories shade into others.

See Appendix B for a listing of all categories and subcategories.

3. CLASS (crimes)

The Class of each crime is included in the data. The Class is either assigned explicitly by the Legislature (e.g. ". . . is a Class D crime.") or the crime is made a particular Class by the operation of Title 17-A, section 4-A. Section 4-A transforms statutory penalties outside the Criminal Code into a particular class of crime based on the maximum term of imprisonment possible under that provision. For example, a provision which makes conduct punishable by "a fine of not more than \$100, or imprisonment for not more than 30 days, or both" is considered, through the operation of section 4-A, a Class E crime. (See Appendix C.) A crime explicitly designated a Class crime is indicated in the CLASS column with that Class in a capital letter. For example, Title 17-A, section 702, provides that "aggravated forgery" is a Class B crime. The charts in this report list it as "B." For crimes which the statute assigns penalties without referring to a "Class" or section 4-A, the CLASS column includes a lower case letter to indicate how section 4-A operates. For example, Title 17, section 1702, punishes knowingly issuing a receipt containing a false statement by a fine of not more than \$1000 and a term of imprisonment of not more than 11 months. Section 4-A transforms this crime into a Class E crime; the charts label this as a Class "e" crime, and include the fine and imprisonment as stated in Title 17, section 1702. Note that, through the operation of Title 17-A, section 4-A, a violation of Title 17, section 1702, is punishable by a maximum of 6 months in jail (maximum imprisonment penalty for a Class E crime, 17-A MRSA §1252) and a \$500 fine (maximum fine for a Class E crime, 17-A MRSA §1301), despite the consequences dictated by the Legislature on the face of section 1702.

The crime of murder (17-A MRSA §202) does not fall into any Class; by design it is classified separately. This is signified as X in the CLASS column.

There are still a handful of sections which label offenses as "misdemeanors" or "felonies." These are indicated in the CLASS column with "m" and "F" respectively. Title 29, section 2303, subsection 2, defines "misdemeanors" as used in that title. For offenses described in Title 29 as "misdemeanors," and for which no other specific penalty is given, the general misdemeanor penalties (\$50-500, <=30 days) are included in the FINE and TERM

columns in the charts. Title 29 also includes "traffic infractions," but traffic infractions are, by definition, civil violations; they are included in the CIVIL VIOLATION columns.

Additional symbols used in the CLASS column are "q," "y," "+1" and "-1." The letter "q" is used to designate an additional penalty (in the only instance in the charts, it is a \$30 surcharge on OUI convictions to pay for chemical tests). The letter "y" indicates that the imprisonment penalty specified in the statute is a minimum penalty, and no maximum is provided, e.g., "not less than 5 days imprisonment." This is used only for crimes for which no Class has been specified. The "+1" and "-1" are used to indicate that if a person engages in the prohibited conduct, the penalty is one class more or less, respectively, than the basic crime. For example, cocaine trafficking is a Class B crime (17-A MRSA §1103, sub-§2, ¶B). Cocaine trafficking while possessing a firearm is "aggravated trafficking" (17-A MRSA §1105, sub-§1, ¶C), and the underlying penalty (Class B) is enhanced by one Class. Cocaine trafficking while possessing a firearm therefore becomes a Class A crime. Conspiracy (17-A MRSA §151), attempt (17-A MRSA §152) and solicitation (17-A MRSA §153) are "crimes of general applicability," meaning that one can be guilty of conspiring or attempting to commit, or soliciting another to commit, almost any crime. (One is guilty of solicitation only if the crime to be committed is murder or a Class A crime or Class B crime.) A person guilty of any of these, and not guilty of the underlying crime itself, may be punished as for a crime of one Class lower than the underlying crime. For example, theft of a \$10,000 car is a Class B crime (17-A MRSA §353 and §362, sub-§2, ¶A). If a person agrees with one or more others to steal the car, but doesn't complete the crime, the person may still be found guilty of conspiracy to commit theft and, therefore, punished as for a Class C crime.

If the Legislature wants to deviate from the principles of the Criminal Code (see Comment, Title 17-A, section 4, reprinted in Appendix C) and impose a specific penalty for a crime without an explicit Class, the Legislature must exempt that section from the operation of section 4-A. For example, failure of a potential juror to complete a jury form is punishable by a fine of up to \$100 and up to 3 days in jail. 14 MRSA §1254-A, sub-§4. If section 4-A

applied, the maximum penalty would be \$500 and 6 months in jail. The Legislature explicitly denied the application of section 4-A, however, by writing the statute as:

"Notwithstanding Title 17-A, section 4-A, a prospective juror, who fails to show good cause for his failure to complete and submit the questionnaire . . . may be punished by a fine of not more than \$100 and by imprisonment for not more than 3 days, or both."

14 MRSA §1254-A, sub-§4 (emphasis added).

If the Legislature intends to attach a higher maximum penalty to a crime to which it has assigned a Class, it can do so by "notwithstanding" section 1252 (for terms of imprisonment) or section 1301 (for fines). The Maine statutes use the term "notwithstanding" to remove a specific section from the effect of a more general provision which would otherwise prohibit or change the specific section. For example, a hazardous waste transport/handling violation is classed as a Class C crime by Title 38, section 1319-T, subsection 1. That provision "notwithstands" Title 17-A, section 1301, to impose a fine of up to \$50,000 per day; section 1301 would otherwise allow a maximum fine of only \$2,500. The Legislature must do the same for any intended deviation from the prescribed ranges of fines and imprisonment found in sections 1301 and 1252, respectively; if the Legislature intends to set a minimum penalty, the statute must specifically negate the application of section 1252 or section 1301. The Office of the Revisor of Statutes is now requiring that criminal statutes that "notwithstand" section 1252 or 1301 also "notwithstand" section 4-A, since section 4-A requires the application of section 1252 and 1301 to crimes outside the Criminal Code (i.e., Title 38, section 1319-T, subsection 1, should read: ". . . notwithstanding Title 17-A, sections 4-A and 1301 . . .").

4. FINE and TERM

For criminal provisions, information is included in the FINE and TERM columns only if the statute specifically mentions a

particular fine or term of imprisonment (or ranges of fine or term). Specific minimum or maximum fines or terms for crimes to which the Legislature has assigned a Class will also show up in these columns. (The penalties for Class crimes as assigned by Title 17-A, sections 1252 and 1301, are contained in Appendix C.) Specific fines and terms of imprisonment are also included if the section proscribing the conduct refers to another section to supply the consequences, and the referenced section provides specific fines and terms. All sections describing Title 29 misdemeanors include the general misdemeanor penalty in the FINE and TERM columns, unless the section specifically prescribes particular penalties, in which case those penalties are included. Also, the general penalties for violating Title 38 (38 MRSA §349) are included for Title 38 sections without other specific penalties. (Note that Title 38, section 349 provides for criminal penalties (subsection 1) as well as civil penalties (subsection 2); both are included in the charts where both may be applicable.)

The information in the FINE and TERM columns is intended to describe the actual penalties in the statute. For example, if the statute makes a crime punishable by "a fine of not more than \$1,000 or imprisonment of not less than 30 days but not more than 6 months," the FINE and TERM columns will contain the following entries:

Fine	Term
<=1000	30d-6m

In contrast, the entry "<500" means that the statute assigned a fine of "less than \$500." Rarely, a statute sets out a specific fine: "Whoever willfully destroys any [U.S. or State] buoy or beacon [in navigable waters] shall forfeit \$100 and be imprisoned for 3 months" (17 MRSA §2497). This shows up in the charts as "100" and "3m." In many instances, the fine is based on the number of violations or the number of days the violation continued. Occasionally, statutes define only the minimum fine or term of imprisonment. These are indicated in the FINE and TERM columns as the minimum preceded by a "greater than" (">") symbol. If this occurs in a statute which fails to assign the crime a Class, there are theoretically no statutory restrictions on how high a penalty the court may impose.

The charts do not track whether the statute mentions the sanctions in the conjunctive ("and" between the fine and term), the disjunctive ("or" between the fine and term) or disjunctive but inclusive ("or" between the fine and term, but followed by "or both"). No indication is made whether the word used to describe the fine or term of imprisonment differs from other statutes, e.g., whether the fine is called a "fine," "forfeiture" or "penalty."

It is the information in the TERM column which leads to classification of the crime as a Class crime through the operation of Title 17-A, section 4-A. (See discussion in section 3 above for operation of section 4-A.)

5. MONETARY (civil violations)

If a civil violation statute prescribes a monetary sanction, the amount is indicated in the MONETARY column. (Civil monetary sanctions of \$1,000 or less are termed "civil forfeitures" while civil monetary sanctions of more than \$1,000 are called "civil penalties;" this report, however, makes no distinction in the data. Also, no indication is included if the statute uses a term other than "forfeiture" or "penalty" to describe the civil sanction (such as "fine".) The actual amounts are portrayed in the same manner as the entries in the FINE and TERM columns for criminal violations.

6. OTHER

Many civil statutes provide for sanctions which are other than monetary, such as enjoining the actor from continuing the conduct or from engaging in other related conduct, or requiring the actor to do a particular activity, such as repairing the damaged property. This type of provision is indicated by a "yes" in the OTHER column. Some criminal statutes provide for similar civil sanctions in addition to the criminal; they are indicated in the OTHER column as well.

7. CULPABLE MENTAL STATE

Many statutes specifically include as part of the crime the state of mind that the actor must have regarding the elements of the crime. This culpable mental state is referred to as the defendant's *mens rea* ("guilty mind"). For example, the crime of criminal threatening is defined as "intentionally or knowingly plac[ing] another person in fear of imminent bodily injury" (17-A MRSA §209, sub-§1 (emphasis added)). (The Maine Criminal Code defines the terms "intentionally," "knowingly," "recklessly" and "criminal negligence" in Title 17-A, section 34.) To be guilty of criminal threatening, a person must either have the conscious object to place another in fear of imminent bodily injury (i.e., intentionally), or the person must be aware that it is practically certain that the person's conduct will cause fear of imminent bodily injury in the other individual (i.e., knowingly). The prosecution must prove that the defendant possessed the specified mental state to obtain a conviction. Many statutes, both civil and criminal, outside the Criminal Code, also include a mental state, occasionally using a term not defined in the Criminal Code, such as "willful," "malicious" or "mischievous." Where a state of mind is specified, the term or terms used are included in the CULPABLE MENTAL STATE column. Chapter 2 of the Criminal Code contains several sections which discuss culpable mental state and the effects of not including one of the defined terms regarding mental state. The chapter applies to all statutes, not just Title 17-A. (This report does not attempt to interpret the effect of using other terms, or including no culpable mental state at all, in a criminal statute.)

8. CROSS-REFERENCE

The final column in the charts is CROSS-REFERENCE. This column contains references to other statutes that are either included in the provision defining the crime or civil violation or which are necessary to understanding the crime itself or the sanctions accompanying it. For example, crimes called "misdemeanors" in Title 29 do not usually specify a fine or term of

imprisonment (except to set a minimum or maximum). The general penalties for misdemeanors in Title 29 are provided in Title 29, section 2303, subsection 2. For Title 29 misdemeanors, therefore, the charts contain the possible fines and terms of imprisonment as designated by section 2303, subsection 2, and "(29:2303,2)" appears in the CROSS-REFERENCE column to show the source of the penalties.

C. Charts of sorted information

Once the information was entered into the data base, the entries were allocated to three groups of statutes. The main group contains all criminal and civil violations (with the exception of fish, game and marine resources laws). The other two groups are subsets of the main group. One contains only those statutes with criminal penalties; the other consists of only statutes containing civil sanctions. Several sections of the statutes have the possibility of either civil or criminal sanctions; these are included in both of the smaller groups. Because of this overlap, the total number of entries in the criminal and civil group is less than the combined total of the entries in the separate criminal and civil groups.

The information from the fish, game and marine resources laws makes up a fourth set of data. These are civil and criminal violations contained in the Title 12 laws administered by The Department of Inland Fisheries and Wildlife and the Department of Marine Resources.

The charts of data are located in Volume Two of this report.

D. Summary of information

Included in this report are 1626 provisions establishing criminal or civil (in some cases both) sanctions for conduct or failure to perform a duty. These sections can be summarized as follows. (These numbers do not include sanctions authorized in the fish, game and marine resources laws. See Volume Two, sections I - III for main data charts; section IV for fish, game and marine resources violations data.)

TABLE A: ALL CRIMINAL AND CIVIL VIOLATIONS

	<u>Total</u>	<u>Criminal Code Title 17-A</u>	<u>Outside Title 17-A</u>
Civil	759	1	758
w/combination	849		848
Criminal	777	172	605
w/combination	867		695
Combination	90		90
TOTAL	1,626	173	1,453

TABLE B: CIVIL VIOLATIONS

	<u>Total</u>	<u>Criminal Code Title 17-A</u>	<u>Outside Title 17-A</u>
Monetary sanctions	654		
max. > 50,000	1		1
max. ≤ 50,000	2		2
max. ≤ 25,000	31		31
max. ≤ 10,000	47		47
max. ≤ 2,500	21		21
max. ≤ 1,000	76		76
max. ≤ 500	333	1	332
open-ended (no max.)	143		143
Traffic infraction	19		
monetary sanction	14		14
other sanction	1		1
no sanction specified	4		4
Other (nonmonetary)	86		
Civil with			
criminal options	90		
T.38 violations (E)			52
Class B		1	1
Class C		3	3
Class D		6	6
Class E		13	13
(other than T.38)			
Misdemeanors		13	13
Open-ended criminal		2	2
CIVIL TOTAL	759		
[With combination]	[849]		

TABLE C: CRIMINAL VIOLATIONS

	<u>Total</u>		<u>Criminal Code Title 17-A</u>	<u>Outside Title 17-A</u>	
Murder	1		1		
Class A	13		8	5	
"A"		10			2
through §4-A		3			3
Class B	38		18	20	
"B"		36			18
through §4-A		2			2
w/civil options				1	
Class C	87		33	54	
"C"		77			44
through §4-A		10			10
w/civil options				3	
Class D	168		66	102	
"D"		156			90
through §4-A		12			12
w/civil options				6	
Class E	487		38	449	
"E"		361			323
through §4-A		126			126
w/civil options				13	
"Felony"	2			2	
"Misdemeanor"	57				57
Title 29		26			
criminal penalty		17			
civil sanction		12			
no specified penalty	2				
Open-ended (no max.)	4				4
w/civil options				2	
Criminal contempt	1				1
Add one Class	5		5		
Subtract one Class	3		3		
CRIMINAL TOTAL	867				

Another way to view the information in a cumulative fashion is by using percentages.

Class A crimes (13) make up close to 0.8% of the total number of sanctions collected (1626), and about 1.5% of the criminal provisions (867).

Eight of the 13 Class A crimes are found in the Criminal Code (61.5%).

Class B crimes (38) constitute about 2.3% of the total number of sanctions collected (1626), and about 4.4% of the criminal statutes.

The Criminal Code contains 18 of the 38 Class B crimes included in the data (47.4%).

The data lists 87 crimes as Class C. This represents about 5.4% of the total sanctions included, and about 10.0% of just the criminal statutes.

There are 33 Class C crimes in the Criminal Code (37.9% of 87 Class C crimes total).

Class D and Class E crimes make up the bulk of the criminal penalties. About 10.3% of the total entries are Class D crimes (168), and about 30% are Class E crimes (487). These are about 19.4% and 56.2%, respectively, of all the criminal violations.

The Criminal Code contains 66 Class D crimes (39.3% of the 168 Class D crimes) and 38 Class E crimes (7.8% of the 487 Class E crimes included in the data.)

Of the 867 entries containing criminal sanctions, 153 do not label the crime as any Class, or as a felony or misdemeanor. Title 17-A, section 4-A, assigns a Class based on the specified term of imprisonment, unless the section specifically "notwithstands" section 4-A or Title 17-A in general. Twenty-eight entries (out of the 1626-entry total) "notwithstand" at least some provisions in Title 17-A.

13	§4-A	(assigns Class based on term)
1	§453	(unsworn falsification)
1	§1252	(range of terms for each Class)
7	§1301	(range of fines for each Class)
1	§4-A & §1301	
5	T. 17-A	

Appendix A: Study information

Excerpt, *Final Report of the COURT JURISDICTION STUDY*.

Excerpt, LD 2328, "An Act to Implement the Recommendations of the Court Jurisdiction Study."

Legislative Council letter to Judiciary Committee Chairs, April 10, 1990.

Excerpt from *Final Report of the COURT JURISDICTION STUDY, to the Joint Standing Committee on Judiciary, January, 1990* (Office of Policy and Legal Analysis, Maine State Legislature).

Part VI, SUMMARY OF RECOMMENDATIONS

A. RECOMMENDATIONS TO BE IMPLEMENTED IMMEDIATELY

10. Require a review of all the criminal penalties in the Maine Revised Statutes to determine if the penalties are appropriate in severity for the offense, particularly in relation to other criminal offenses. The Legislative Council would appoint a special legislative committee to perform this review. . . .

Excerpts from 114th Maine Legislature, LD 2328, An Act to Implement the Recommendations of the Court Jurisdiction Study.

PART B, Sec. B-1 and B-3, page 5

Sec. B-1. Commission established. There is established the Commission on the Criminal Penalties in the Maine Revised Statutes to determine the consistency of the penalties outside the Maine Criminal Code with the penalties within the Maine Criminal Code.

Sec. B-3. Duties. The commission shall compare the criminal penalties for offenses established within the Maine Criminal Code with the criminal penalties for offenses established in other titles of the Maine Revised Statutes. The Commission shall determine if the penalties for offenses established outside of the Maine Criminal Code are commensurate with the penalties for similar Maine Criminal Code Offenses.

2 Penalties outside the Criminal Code · Appendix A ·



REP JOHN L MARTIN
CHAIR

SEN DENNIS L DUTREMBLE
VICE-CHAIR

STATE OF MAINE

114th LEGISLATURE

LEGISLATIVE COUNCIL

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EXECUTIVE DIRECTOR

April 10, 1990

Honorable Barry J. Hobbins, Senate Chair
Honorable Patrick E. Paradis, House Chair
Joint Standing Committee on Judiciary
114th Maine Legislature
Augusta, Maine 04333

Dear Senator Hobbins and Representative Paradis:

The Legislative Council met this morning to review requests from Committees to conduct interim studies. Our review also encompassed those studies which are included in legislation that has been reported out by committee and is still pending.

I am writing to inform you that the Council has taken the following actions on studies recommended by your Committee:

Commission on the Criminal
Penalties in the Maine Revised
Statutes

Approved as a
a Staff Research Study
only

Study on Grandparents' Rights

Approved as a Staff
Research Study only

Commission to Study the Future
of Maine's Courts


Recommended approval;
Council staffing to be
available for drafting
assistance only

Honorable Barry J. Hobbins, Senate Chair
Honorable Patrick E. Paradis, House Chair
Joint Standing Committee on Judiciary
April 10, 1990
Page Two

A complete list of the Council's action on study requests is enclosed.

I would be happy to answer any questions you may have.

Sincerely,


John L. Martin, Chair
Legislative Council

Enclosure

cc: Members of the Legislative Council
Martha Freeman, Director, Office of Policy
and Legal Analysis

Appendix B: Categories and Subcategories

Crimes and civil violations (excluding fish, game and marine resources violations)

CATEGORY	SUBCATEGORY CATEGORIES	SIMILAR OR RELATED
aband prop (abandoned property)		
agr (agriculture)	bus label/info	info - fail falsification
animals		
bail		
bribery, corrupt (bribery and corrupt practices)		public officials
burglary	trespass	
business/commerce	corp (corporations) deceptive goods ins (insurance) mv (motor vehicles) pkgng (packaging) sec/commod (securities/ commodities) Sunday/holiday trade	fraud
communications	UTP (unfair trade practice)	
computer crimes		
consumer	info UTP (unfair trade practice)	info - fail
crimi/person (crimes against the person)		
drugs	minors	
elections		
energy		
explosives, etc.		
fail to pay		
falsification	tax	tax forgery info - fail public admin business/commerce public safety: enviro
	goods haz mat (hazardous materials)	
financial inst (financial institutions)	tax	tax

2 Penalties outside the Criminal Code · Appendix B ·

forestry		
forgery	falsification	
fraud		business; deceptive
gambling		minors
gen		
	(general penalties)	
gen crim		
	(general criminal applications)	
human/civil rights		
indecency		
info - fail		falsification
		public admin
	consumer	
	forestry	
	mv	
	(motor vehicles)	
	report	
	tax	tax
	UTP	consumer
	(unfair trade	business/commerce
	practice)	
kidnap/rstrmt		
	(kidnapping and criminal restraint)	
labor		
	wages	
land use	public safety; enviro	
lic/permit		
	forestry	forestry
	haz mat	public safety; enviro
	(hazardous	
	materials)	
	mv	
	(motor vehicles)	
	no	
	(no license/cert/etc)	
	prof	
	(professional	
	license/cert/etc)	
	UTP	consumer
	(unfair trade	
	practice)	
liquor	minors	
military	public admin	
minors		
	gambling	gambling
	liquor	liquor
nuisance		
	health	public safety; enviro
		public safety; health
offense/family		
	(offenses against the family)	
official signs/marks		
	(state signs, markers, buoys, etc)	prop dam
OUI		
	(operating under the influence)	
product safety		consumer
prop dam		
	(property damage)	
	haz mat	
	(hazardous	
	materials)	

public admin (public administration)	noncomply	
public employees	UTP (unfair trade practice)	
public officials	omission	
public order		
public safety	boat enviro (environment)	
	forestry	forestry
	haz mat (hazardous materials)	
	health	smoking
	mv (motor vehicles)	
	roads	
	RR (railroads)	RR
	UTP (unfair trade practice)	
release info (release of information)		
robbery		
RR		public safety; RR
sex offenses		
smoking	public safety; health	
tax		info - fail; tax falsification; tax
theft		
trespass		
UTP (unfair trade practices)		
waste		
weapons		

Appendix C: Statutory provisions

Title 17-A, section 4-A

Title 17-A, section 4-B

Title 17-A, section 34

Title 17-A, section 35

Title 17-A, section 1251

Title 17-A, section 1252, subsection 2

Title 17-A, section 1301, subsection 1-A

Title 29, section 2303

Title 38, section 349

Criminal Code Revision Commission Comments (1975), Title 17-A,
section 4

Title 17-A

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

1. Except as provided in section 1, subsection 2, this section becomes effective October 24, 1977.

2. repealed

2-A. 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. 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. repealed

Title 17-A

§4-B. Civil violations

1. 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 law.

2. A law or ordinance may be expressly designated as a civil violation.

3. A law or ordinance which prohibits defined conduct, but does not provide an imprisonment penalty, is a civil violation, enforceable in accordance with subsection 1. A law or ordinance which is stated to be a criminal violation or which otherwise uses language indicating that it is a crime, but does not provide an imprisonment penalty is a civil violation, enforceable in accordance with subsection 1, unless the law or ordinance is an exception to the operation of this subsection.

4. Evidence obtained pursuant to an unlawful search and seizure shall not be admissible in a civil violation proceeding arising under Title 22, section 2383.

Title 17-A

§34. Culpable state of mind as an element

1. A person is not guilty of a crime unless he acted intentionally, knowingly, recklessly or negligently, as the law defining the crime specifies, with respect to each other element of the crime, except as provided in subsection 5. When the state of mind required to establish an element of a crime is specified as "willfully," "corruptly," "maliciously" or by some other term importing a state of mind, that element is satisfied if, with respect thereto, the person acted intentionally or knowingly.

2. When the definition of a crime specifies the state of mind sufficient for the commission of that crime, but without distinguishing among the elements thereof, the specified state of mind shall apply to all the elements of the crime, unless a contrary purpose plainly appears.

3. When the law provides that negligence is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally, knowingly or recklessly. When the law provides that recklessness is sufficient to establish an element of a crime, that element is also established if, with respect thereto, a person acted intentionally or knowingly. When the law provides that acting knowingly is sufficient to establish an element of the crime, that element is also established if, with respect thereto, a person acted intentionally.

4. Unless otherwise expressly provided, a culpable mental state need not be proved with respect to:

- A. Any fact which is solely a basis for sentencing classification; or
- B. Any element of the crime as to which it is expressly stated that it must "in fact" exist.

5. If a statute defining a crime does not expressly prescribe a culpable mental state with respect to some or all of the elements of the crime, a culpable mental state is nevertheless required, pursuant to subsections 1, 2 and 3, unless:

- A. The statute expressly provides that a person may be guilty of a crime without a culpable state of mind as to those elements; or
- B. A legislative intent to impose liability without a culpable state of mind as to those elements otherwise appears.

Title 17-A

§35. Definitions of culpable states of mind

1. "Intentionally."

A. A person acts intentionally with respect to a result of his conduct when it is his conscious object to cause such a result.

B. A person acts intentionally with respect to attendant circumstances when he is aware of the existence of such circumstances or believes that they exist.

2. "Knowingly."

A. A person acts knowingly with respect to a result of his conduct when he is aware that it is practically certain that his conduct will cause such a result.

B. A person acts knowingly with respect to attendant circumstances when he is aware that such circumstances exist.

3. "Recklessly."

A. A person acts recklessly with respect to a result of his conduct when he consciously disregards a risk that his conduct will cause such a result.

B. A person acts recklessly with respect to attendant circumstances when he consciously disregards a risk that such circumstances exist.

C. For purposes of this subsection, the disregard of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

4. "Criminal negligence."

A. A person acts with criminal negligence with respect to a result of his conduct when he fails to be aware of a risk that his conduct will cause such a result.

B. A person acts with criminal negligence with respect to attendant circumstances when he fails to be aware of a risk that such circumstances exist.

C. For purposes of this subsection, the failure to be aware of the risk, when viewed in light of the nature and purpose of the person's conduct and the circumstances known to him, must involve a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

5. **"Culpable."** A person acts culpably when he acts with the intention, knowledge, recklessness or criminal negligence as is required.

Title 17-A

§1251. Imprisonment for murder

A person convicted of the crime of murder shall be sentenced to imprisonment for life or for any term of years that is not less than 25. The sentence of the court shall specify the length of the sentence to be served and shall commit the person to the Department of Corrections.

Title 17-A

§1252. Imprisonment for crimes other than murder

2. The court shall set the term of imprisonment as follows:

A. In the case of a Class A crime, the court shall set a definite period not to exceed 40 years;

B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years;

C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;

D. In the case of a Class D crime, the court shall set a definite period of less than one year; or

E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.

Title 17-A

§1301. Amounts authorized

1-A. A natural person who has been convicted of a Class A, Class B, Class C, Class D or Class E crime may be sentenced to pay a fine, unless the statute that the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person must be sentenced to the imprisonment and required to pay the fine authorized in that statute. Subject to these sentences and to section 1302, the fine may not exceed:

- A. \$25,000 for a Class A crime;
- B. \$10,000 for a Class B crime;
- C. \$2,500 for a Class C crime;
- D. \$1,000 for a Class D crime;
- E. \$500 for a Class E crime; and
- F. Regardless of the classification of the crime, any higher amount that does not exceed twice the pecuniary gain derived from the crime by the defendant.

3. If the defendant convicted of a crime is an organization and the statute which it is convicted of violating expressly provides that the fine it authorizes may not be suspended, the organization shall be sentenced to pay the fine authorized therein. Otherwise, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

- A. Any amount for murder;
- B. \$50,000 for a Class A crime;
- C. \$20,000 for a Class B crime;
- D. \$10,000 for a Class C crime;
- E. \$5,000 for a Class D crime or a Class E crime; and
- F. Any higher amount which does not exceed twice the pecuniary gain derived from the crime by the convicted organization.

Title 29

§2303. General penalty

1. **Traffic infraction; violation.** Any violation defined as a traffic infraction shall be punished by a fine of not less than \$25 nor more than \$250 when no other penalty is specifically provided.

2. **Misdemeanor.** Any violation of this Title specifically defined as a misdemeanor shall be punished by a fine of not less than \$50 nor more than \$500 or by imprisonment for not more than 30 days, or by both, when no other penalty is specifically provided.

Title 38

§349. Penalties

1. Criminal penalties. Any person who violates any provisions of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is guilty of a Class E crime and may be punished accordingly, except notwithstanding Title 17-A, section 1301, subsection 1, paragraph C, or subsection 3, paragraph E, the fine for such a violation may not be less than \$100 nor more than \$25,000 for each day of the violation.

This subsection does not apply to actions subject to the criminal penalties set forth in section 1319-T.

2. Civil penalties. Any person who violates any provision of the laws administered by the department, including, without limitation, a violation of the terms or conditions of any order, rule, license, permit, approval or decision of the board or commissioner, or who disposes of more than 500 pounds or more than 100 cubic feet of litter for a commercial purpose, in violation of Title 17, section 2264, is subject to a civil penalty, payable to the State, of not less than \$100 nor more than \$10,000 for each day of that violation or, if the violation relates to hazardous waste, of not more than \$25,000 for each day of the violation.

3. Falsification and tampering. Notwithstanding Title 17-A, section 4-A, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained by any provision of law administered by the department, or by any order, rule, license, permit, approval or decision of the board or commissioner, or who tampers with or renders inaccurate any monitoring devices or method required by any provision of law, or any order, rule, license, permit, approval or decision of the board or commissioner or who fails to comply with any information submittal required by the commissioner pursuant to section 568, subsection 3, or section 1364, subsection 3, is, upon conviction, subject to a fine of not more than \$10,000, or by imprisonment for not more than 6 months, or both.

4. Violations. repealed

5. Considerations. In setting a penalty, the court shall consider, but shall not be limited to, the following:

- A. Prior violations by the same party;
- B. The degree of environmental damage that cannot be abated or corrected;
- C. The extent to which the violation continued following an order of the commissioner or board to correct it; and
- D. The importance of setting a civil penalty substantial enough to deter others from similar violations.

6. Maximum civil penalty. The maximum civil penalty may exceed \$10,000 for each day of that violation, but shall not exceed \$25,000 for each day of the violation, when it can be shown that there has been a previous violation of the same law by the same party within the 5 preceding years.

7. Notification. The commissioner shall notify all newspapers of general circulation in the State of all administrative consent agreements, court-ordered consent decrees and adjudicated violations involving laws administered by the department.

8. Economic benefit. If the economic benefit resulting from the violation exceeds the applicable penalties under subsection 2, the maximum civil penalties may be increased for each day of the violation. The maximum civil penalty may not exceed an amount equal to twice the economic benefit resulting from the violation. The court shall consider as economic benefit, without limitation, the costs avoided or enhanced value accrued at the time of the violation by the violator not complying with the applicable legal requirements.

Comment, Title 17-A, §4

From LD 314, 107th Legislature (1975), enacted as PL 1975, c. 499. (Note that the current section 4 differs from the section 4 as enacted in 1975; the provisions relating to the classification of crimes outside the Criminal Code are now found in Title 17-A, section 4-A. The Comment now applies to section 4-A.)

Comment

One of the major changes made in this code is that crimes are grouped into classes for sentencing purposes, as a substitute for the present scheme whereby each provision of the law not only defines the conduct that is criminal, but provides a specific penalty as well. Under the code, penalties are provided for each class, not for each crime. This section serves several purposes in bringing about the change.

Subsection 1 notifies the reader of the code that there are these sentencing classes. Subsection 2 is, in effect *a conversion table which allocates to a particular sentencing class, every crime that is defined by a law outside of the code. This is necessary in order to have one, rather than two, sentencing systems. It should be noted that this section does not declare what the penalty is for each sentencing class; it merely assigns crimes outside the code to a sentencing class on the basis of the penalty now provided for those crimes.* [emphasis added]

Subsection 3 defines a civil violation as prohibited conduct which calls for some penalty other than imprisonment. It accomplishes the moving out of the criminal law those things which are of minimal seriousness. The monetary cost of engaging in the conduct can then be assessed in the more simple and flexible molds of civil procedure. Subsection 4 is a necessary exception to this decriminalization of "fine only" offenses. It serves to continue as a criminal violation any conduct which a statute declares may be committed by an organization and which would, therefore, carry only a fine as a penalty. Since fines are the only penalties which could have been provided in such cases, the assumption otherwise valid that where there is no imprisonment the conduct is not serious, does not hold.

Appendix D: Sample pages of data charts

CRIMINAL AND CIVIL VIOLATIONS: By title and section, page 1

CRIMES: By Class, page 1

FISH, GAME AND MARINE RESOURCES VIOLATIONS: By category,
page 1

CRIMES AND CIVIL VIOLATIONS: BY TITLE AND SECTION

Title	Sub-		Subject	Category	Sub. Category	Criminal Penalty			Civil Violation		Culpable Mental State	Cross Reference
	Sec.	Sec.				Class	Fine	Term	Monetary	Other		
1	202		removes/defaces state seal	prop dam		C					intent	
1	203		illegal use of state seal	official signs/marks		D					intent	
1	204		use of st seal for commercial	official signs/marks		E						
1	252-A		Improper display of U.S. flag	official signs/marks		E						
1	253		flag desecration	official signs/marks					50			
1	254		flag mutilation(except s. 255)	official signs/marks		E						
1	410		willful violation-FrdmOAccess	info - fail					500		willful	
1	452		remove/mutilate state docs.	prop dam		D					intent	
1	1019		Legis.intent.filing false stmt.	falsification		E					intent	
1	1020		false charge of conflict	falsification		E						
3	319		fail to file lobby reg. or report	info - fail	report				50			
4	561		Ct. clerk taking illegal fees	public officials					50			
4	565		Ct. clerk did not correct records	public officials	omission					yes		
4	567		Ct. clerk represent in that court	public officials					100			
4	808		unauthorized practice of law	lic/permit	no					yes		
4	853		conduct unworthy of atty.	business/commerce						yes		
4	859		false rep. as atty.	falsification		E						
4	955-A		Improper or unauthorized notary	public officials							yes	
4	956		notary fail submit records	public officials	omission				50-500			
4	957		destroys/conceals notarial record	public officials					200-1000	yes	know	
4	1154		failure to obey admin ct subpoena	public admin	noncomply					yes		
5	8-H		housing,income,domestic service	public employees					1000	yes		
5	18		executive ee's DQ'd	public employees					<=1000			
5	19		exec. ee's-financial disclosure	info - fail					<=100			
5	20-A		St ee take st prop:>\$5000	theft		B						17A:362
5	20-A		St ee take st prop:\$1000-5000	theft		C						17A:362
5	20-A		St ee take st prop: w/2 convict	theft		C						17A:362
5	20-A		St ee take st prop:<=\$1000	theft		D						17A:362
5	20-A		St ee take st prop:<=\$500	theft		E						17A:362
5	27		State ee testimony before legls.	public employees		E						

• Penalties outside the Criminal Code . Appendix D 1

CRIMES: BY CLASS

Title	Sec.	Sub- Sec.	Subject	Category	Sub. Category	Criminal Penalty			Civil Violation		Culpable Mental State	Cross Reference
						Class	Fine	Term	Monetary	Other		
17-A	201		murder	crim/person		X					intent/know	
17	2922	2	2nd sexual exploitation of minor	minors		A		10y			Intent/know	
17-A	202		felony murder	crim/person		A						
17-A	203		manslaughter	crim/person		A					reck/crim neg	
17-A	253		gross sexual assault	sex offenses		A						
17-A	301		kidnapping	kidnap/rstrnt		A					Intent	
17-A	401		burglary-armed/firearm	burglary		A						
17-A	651		robbery-intent injure/force	robbery		A						
17-A	802		arson	prop dam		A						
17-A	803		cause catastrophe	prop dam		A					reck	
38	571		corrupt water/drinking supply	public safety	health	A					Intent/know	
17	1351		dueling/aiding in duel	public order		a	<=1000	<20y				
17	1353		illegal dueling out of state	public order		a	<=1000	<=20y				
17	1751		fraud destruction of vessel	prop dam		a	<=5000	<=20y			willful	
5	20-A		St ee take st prop:>\$5000	theft		B						17A:362
8	223	2	fireworks-sell >\$5000	explosives, etc.		B						
12	8849		cut Christmas tree: >\$5000	theft		B			3xdamages			17A:362
15	710	6	sale of interception devices	communications		B						
17	2922	2	1st sexual exploitation of minor	minors		B		5y			Intent/know	
17	2923	3	2nd dissemtn sexually explicit mat	indecenty		B		5y			Intent/know	
17-A	203		veh manslaughter w/civil viol	crim/person		B					reck/crim neg	
17-A	208		agg assault	crim/person		B					Intent/know/reck	
17-A	253		gross sexual assault	sex offenses		B						
17-A	301		kidnapping-release	kidnap/rstrnt		B					Intent	
17-A	362		thelt >\$5000/firearm/armed	theft		B						
17-A	401		burglary-injury/weapon	burglary		B						
17-A	454		tamper with victim	falsification		B						
17-A	651		robbery-threat/reck injure	robbery		B						
17-A	702		agg forgery	forgery		B					Intent/know	
17-A	703		lorger >\$5000	forgery		B						

FISII, GAME AND MARINE RESOURCES VIOLATIONS: BY CATEGORY

Title	Sub-		Subject	Category	Sub- Category	Criminal Penalty			Civil Violation		Culpable Mental State	Cross Reference
	Sec.	Sec.				Class	Fine	Term	Monetary	Other		
12	6101		misleading labeling	agr	label/info	D						(12:6204)
12	6114		surimi viol	agr	label/info				<=100			
12	7458	7	false registration of deer	falsification	ifw	E						(12:7901)
12	7373		fraud obtain llc/permit	falsification	ifw	E						(12:7901)
12	7469	4	false registration wild turkeys	falsification	ifw	E						(12:7901)
12	7464	4	false registration of moose	falsification	ifw	E						(12:7901)
12	7369	11	misrepresent whitewater allocation	falsification	whitewater	E				yes		(12:7901)
12	7458	10	driving deer	ifw	ifw	E						(12:7901)
12	7464	1	illegal hunt of moose	ifw	ifw	D	>=1000	1>=3d;2>=10d				(12:7901,2)
12	7458	9	enticing deer	ifw	ifw	E						(12:7901)
12	7863	3	misuse dog training area	ifw	ifw	E						(12:7901)
12	7456-B	1	hunting caribou	ifw	ifw	E	2000-10000	30d-6m				(12:7901)
12	7336	1	keep wild animals in captivity	ifw	ifw	E						(12:7901)
12	7456	6	destroy nest/eggs of wild birds	ifw	ifw	E						(12:7901)
12	7654	1	illegal activity in wildlife sanc	ifw	ifw	E						(12:7901)
12	7456	3	illegally hunt wild birds	ifw	ifw	E						(12:7901)
12	7622		advance baiting	ifw	ifw	E	20/fish					(12:7901,3)
12	7454	5	nonresident trapping beaver	ifw	ifw	E						(12:7901)
12	7607		jigging	ifw	ifw	E	20/fish					(12:7901,3)
12	7454	4	advance prepare for trap beaver	ifw	ifw	E						(12:7901)
12	7605		illegally introduce fish/spawn	ifw	ifw	E	20/fish					(12:7901,3)
12	7452	8	leaving a bear	ifw	ifw	E						(12:7901)
12	7541	2	disturb wild animals/birds/fish	ifw	ifw	E			100-500			(12:7901)
12	7452	3	hunt/trap bear after killed 1	ifw	ifw	E						(12:7901)
12	7469	1	illegal hunt wild turkeys	ifw	ifw	E	>=500+500/turk					(12:7901,8)
12	7452	1-B	illegal harvest of bear	ifw	ifw	E						(12:7901)
12	7466	3	molest/destroy muskrat house	ifw	ifw	E						(12:7901)
12	7432	7	disturbing traps	ifw	ifw	E						(12:7901)
12	7371-A		guide viol	ifw	ifw	E						(12:7901)
12	7432	6	trap near compact/built up city	ifw	ifw	E						(12:7901)

