

# MAINE STATE LEGISLATURE

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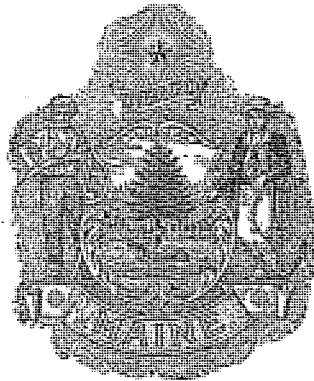
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## CHAPTER 136.

### Proceedings in Court in Criminal Cases.

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### Oaths and Duties of Grand Jurors.

**Sec. 1.** Clerk shall prepare list of grand jurors. R. S. c. 135, § 1. Prior to the commencement of each term of the court to which grand jurors are returned, in any county, the clerk of the court shall make out, from the returns on the venires, an alphabetical list of such jurors.

See c. 111, § 14; 36 Me. 130; 38 Me. 201, 300; 49 Me. 576, 594; 51 Me. 397.

**Sec. 2.** Grand jurors' oath. R. S. c. 135, § 2. When the grand jury is to be impaneled, the clerk shall call the first two persons named on the list, and administer the following oath to them: "You, as grand jurors of this county of ———, solemnly swear, that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows' and your own, you shall keep secret. You shall present no man for envy, hatred or malice; nor leave any man unrepresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders, and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you on your part shall well and truly observe and keep. So help you God."

64 Me. 284.

**Sec. 3.** Form of affirmation for grand juror. R. S. c. 135, § 3. When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may make affirmation, substituting the word "affirm" instead of "swear," and also the words "This you do under the pains and penalties of perjury," instead of "So help you God."

**Sec. 4.** Election of foreman. R. S. c. 135, § 4. The grand jury, having been impaneled and instructed by the court, shall retire in company with an officer to their room, and there elect, by ballot, one of their number for foreman, and give notice thereof to the court, and the clerk shall record it.

**Sec. 5.** Term of foreman's office. R. S. c. 135, § 5. Such foreman shall continue in office during the time for which he was returned; but in case of his sickness or absence, the jury may in like manner elect and announce to the court another foreman.

**Sec. 6. Oaths of witnesses before grand jury.** R. S. c. 135, § 6. The attorney-general, county attorney or foreman of the grand jury, shall swear or affirm, in presence of the jury, all witnesses who are to testify before them, and a list thereof, stating the cases in which they testify, shall be returned into court by the foreman before the jury is discharged, and filed and entered on record by the clerk. The clerk shall not make such list public, until the criminal cases at such term have been tried or otherwise disposed of.

67 Me. 129; 76 Me. 317.

**Sec. 7. Grand jury shall present all offenses; sufficient indictment for murder or manslaughter.** R. S. c. 135, § 7. Grand juries shall present all offenses cognizable by the court at which they attend; and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs; and when they are dismissed before the court adjourns, they may be summoned again, on any special occasion, at such time as the court directs. It is sufficient in every indictment for murder, to charge that the defendant did feloniously, wilfully and of his malice aforethought, kill and murder the deceased; and for manslaughter, to charge that the defendant did feloniously kill and slay the deceased, without, in either case, setting forth the manner or means of death.

4 Me. 444; 32 Me. 373; 54 Me. 413; 65 Me. 266.

**Sec. 8. Disclosures improper to be made by grand jurors.** R. S. c. 135, § 8. No grand juror or officer of the court shall disclose that an indictment for felony has been found against any person not in custody or under recognizance, until he is arrested, except by issuing process for his arrest; nor shall any grand juror state how any member of the jury voted, or what opinion he expressed, on any question before them; and the court, in charging such jury, shall impress on their minds this section.

**Sec. 9. Recognizance of witnesses.** 1909, c. 188. When an indictment has been returned into court, any justice of the supreme judicial court or superior court may order the material witnesses against the respondent or respondents named in the indictment to recognize with sufficient sureties to appear and testify at the trial of said indictment in said court; and if said witnesses refuse or fail to recognize they may be committed to prison and remain until discharged by law, and such justice may issue *capias* to bring such witness before the court to give his recognizance, or upon failure or refusal so to recognize to be committed as aforesaid.

#### Bail. Arraignment and Trial of Prisoners.

**Sec. 10. When persons in prison may be bailed or discharged, if not indicted.** R. S. c. 135, § 9. Any person in prison charged with a crime punishable by imprisonment for life, may be bailed or discharged if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed.

**Sec. 11. Right of person indicted to speedy trial.** R. S. c. 135, § 10. Any person in prison under indictment shall be tried or bailed at the next term after the finding thereof, if he demands it, unless the court is satisfied that some of the witnesses on the part of the state have been enticed away, or

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detained from court by some cause beyond their control; and all persons under indictment for felony, if they have been arrested thereon, shall be tried or bailed at the second term after the finding thereof. Any person indicted, although he has not been arrested, is entitled to a speedy trial, if he demands it in person in open court.

**Sec. 12. Standing mute.** R. S. c. 135, § 11. When a person indicted stands mute, the court shall order the plea of not guilty to be entered, with the same effect as if he had pleaded not guilty.

**Sec. 13. Jury for trials of offenses punishable by imprisonment for life, how to be impaneled; challenges.** R. S. c. 135, § 12. 1907, c. 146. When a person indicted for an offense punishable by imprisonment for life, is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance, in a box, upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. The state shall not challenge more than ten of the jurors peremptorily, and the person indicted shall not challenge peremptorily more than twenty of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily, two of the jurors from the panel. The supreme judicial court may, by general rules, prescribe the mode of exercising the right of challenge from the panel in all criminal cases.

67 Me. 337; 74 Me. 507.

**Sec. 14. Trial of cases of murder and treason.** R. S. c. 135, § 13. One justice of the supreme judicial court may hold a term thereof in any county, except in the counties of Cumberland and Kennebec, for the trial of persons indicted for treason or murder and exceptions may be taken as in other cases, to their rulings and decisions.

**Sec. 15. Persons indicted for felony furnished with copy of indictment; witnesses summoned at state's expense; counsel to be assigned in certain cases; compensation.** R. S. c. 135, § 14. The clerk shall, without charge, furnish to any person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if he is indicted for a crime punishable by imprisonment for life, the clerk shall furnish a copy of the indictment, a list of the jurors returned, and process to obtain witnesses, to be summoned and paid at the expense of the state; if for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the state only at the discretion of the court. Competent counsel shall be assigned by the court in cases punishable by imprisonment for life, when it appears that the accused has not sufficient means to employ counsel; and reasonable compensation for the services of counsel shall be allowed by the court, to be paid out of the county treasury.

76 Me. 207.

**Sec. 16. Prosecuting officer may summon witnesses; no tender of fees to state witnesses.** R. S. c. 135, § 15. The prosecuting officer has the same power as the clerk of the court to issue a summons for witnesses in crim-

inal cases; and no costs shall be taxed for witnesses before the grand jury in a case where no bill is found, nor in complaints against towns for defect of road, unless they recognized so to attend, or were summoned by order of the grand jury or prosecuting officer; nor is it necessary to tender fees to witnesses summoned in behalf of the state.

**Sec. 17. Punishment of state witness for not attending. R. S. c. 135,**

**§ 16.** Whoever, having been summoned as a witness in behalf of the state before any court or grand jury, without reasonable cause fails to appear at the time and place designated in the summons, if he is not punished therefor as for contempt, shall be punished, on indictment, by imprisonment for less than one year, or by fine not exceeding one hundred dollars.

See c. 87, § 120.

**Sec. 18. Witnesses are not entitled to fees until the second or third day in continued cases, etc. R. S. c. 135, § 17.** No fees in criminal cases continued after the first term shall be allowed to witnesses on the part of the state, until the second day of the term in Hancock, Oxford, Franklin, Piscataquis and Aroostook; nor until the third day in any other county, unless they were summoned at an earlier day; and in all criminal cases, previous to the determination thereof, the court may allow such costs for justices, officers, aids, jurors and witnesses, as are provided by law, to be paid from the county treasury; but no court or magistrate shall allow any charge for aid or other expenses of the officer in serving a warrant, except his stated fees for service and travel, unless, on his examination upon oath, or on other evidence, they find such additional charges reasonable.

**Sec. 19. Prisoner need not be asked how he will be tried. R. S. c. 135,**

**§ 18.** When a person is arraigned on an indictment, he need not be asked how he will be tried; and when a plea in abatement, or other dilatory plea to an indictment is offered, the court may refuse to receive it until it is verified by affidavit or other evidence.

See c. 82, § 4.

15 Me. 107; 23 Me. 114; 36 Me. 132; 37 Me. 333; 38 Me. 300; 39 Me. 361.

**Sec. 20. Depositions may be taken out of the state; also in the state; respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify. R. S. c. 135, § 19.** On application of the defendant in a criminal case, the court may grant a commission to take the depositions of material witnesses living out of the state, upon interrogatories in the same manner, with the same effect, and subject to exceptions, as in civil causes; the prosecuting officer may join in such commission, and name therein any material witness to be examined on the part of the state; but if at the trial, the defendant does not use the depositions so taken for him, those taken for the state shall not be used. And upon like application by the defendant in a criminal case, a like commission may issue to take the deposition of a material witness living in the state; but the prosecuting officer shall not name therein any material witness to be examined on the part of the state. In all criminal trials, the accused shall, at his own request, but not otherwise, be a competent witness. He shall not be compelled to testify on cross-examination to facts that would convict, or furnish evidence to convict him of any other crime than that for which he is on trial; and the fact that he does not testify in his own behalf, shall not be taken as

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evidence of his guilt. The husband or wife of the accused is a competent witness.

59 Me. 300; 63 Me. 211; 65 Me. 240; 72 Me. 534; 74 Me. 508; 76 Me. 410; 78 Me. 492; 85 Me. 96.

**Sec. 21. Facts tried, challenges allowed, as in civil cases.** R. S. c. 135, § 20. Issues of fact joined on indictments, shall be tried by a jury drawn and returned in the same manner, and challenges shall be allowed to the prosecuting officer and the accused, as in civil cases; but no member of a grand jury finding an indictment, shall sit on the trial thereof, if challenged therefor by the accused.

Practice and evidence in criminal cases. 19 Me. 227, 401; 21 Me. 18; 26 Me. 317; 29 Me. 336, 563; 30 Me. 30, 183, 344; 31 Me. 63; 32 Me. 372, 585; 34 Me. 40; 37 Me. 331, 363; 38 Me. 575; 39 Me. 65, 69, 92, 296, 361; 40 Me. 560; 43 Me. 108; 45 Me. 329; 46 Me. 531; 47 Me. 450; 48 Me. 238, 366; 51 Me. 364, 396; 53 Me. 127, 331, 549; 54 Me. 28, 579; 55 Me. 213; 65 Me. 469; 67 Me. 337; 74 Me. 507, 511; 80 Me. 416; 81 Me. 256.

**Sec. 22. Juror's oath or affirmation.** R. S. c. 135, § 21. The following oath shall be administered to jurors in cases punishable by imprisonment for life: "You swear, that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God." In all other criminal cases, the following: "You swear, that you will well and truly try the issue between the state and the defendant, according to your evidence. So help you God." Any juror conscientiously scrupulous of taking an oath, may affirm in the mode described in section three.

**Sec. 23. Respondent must be present at trial for felony.** R. S. c. 135, § 22. No person indicted for felony shall be tried, unless present during the trial; but persons indicted for less offenses, at their own request and by leave of court, may be tried in their absence, by their attorney.

67 Me. 424.

**Sec. 24. View.** R. S. c. 135, § 23. The court may order a view by any jury in a criminal case.

**Sec. 25. When court may postpone or continue.** R. S. c. 135, § 24. The trial of any criminal case, except for a crime punishable by imprisonment for life, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom, and the case continued, if justice will thereby be promoted.

85 Me. 171.

#### Payment of Private Claims from Forfeited Recognizances.

**Sec. 26. Private claims may be paid out of forfeited recognizances.** R. S. c. 135, § 25. When the penalty of a recognizance to prosecute an appeal is paid to the clerk of the court or county treasurer, the court may award to any person therefrom the same sum that he would have been entitled to receive from the penalty affixed to the offense, if paid on conviction, and not on recognizance.

#### Proceedings After Verdict.

**Sec. 27. Sentence shall be imposed upon conviction; form of recognizance; stay of execution of sentence may be had; bail after commitment.** R. S. c. 135, § 26. 1905, c. 106. Sentence shall be imposed upon conviction

tion, either by verdict or upon demurrer, of a crime which is not punishable by imprisonment for life, although exceptions are alleged. Questions of law may be reserved on a report signed by the presiding justice, and in such case, and where exceptions are allowed, the defendant may, when the offense charged is bailable, recognize with sureties, in such sum as the court orders, with conditions substantially as follows: "The condition of this recognizance is such that, whereas there is now pending in the court, within and for the county of \_\_\_\_\_, an indictment against the said \_\_\_\_\_ for the offense of \_\_\_\_\_, in the course of the proceedings upon which, questions of law requiring the decision of the justices of the supreme judicial court have arisen; now if said \_\_\_\_\_ shall personally appear before said \_\_\_\_\_ court, to be held in and for said county, from term to term, until and including the term of said court next after the certificate of decision shall be received from said justices, and shall abide the decision and order of said court, and not depart without license, then this recognizance shall be void." If he does not so recognize, the court, on request of the defendant upon whom sentence is imposed may allow stay of execution of sentence, in which case commitment shall be to await final decision; otherwise, such commitment shall be in execution of sentence. When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, or any person is committed pending decision on report or exceptions, as herein provided, and remains imprisoned after the adjournment of court, he shall be admitted to bail only by the justice trying him, by some person by him appointed therefor, or by some justice of the supreme judicial court. If a person shall be so admitted to bail after commitment in execution of sentence, as above provided, such admission to bail shall vacate the effect of the original commitment, and the full term of imprisonment shall commence from the date of commitment after final decision.

See c. 104, § 35; 41 Me. 167; 42 Me. 385; 59 Me. 305; 70 Me. 334; 80 Me. 82; 89 Me. 209; 98 Me. 286; 105 Me. 209.

**Sec. 28. Appeal when punishment is imprisonment for life and in certain other criminal cases.** R. S. c. 135, § 27. 1909, c. 184. 1913, c. 18. If a motion for a new trial in any case, in which a person has been convicted of any offense for which the punishment is imprisonment for life, is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term; and the concurrence of a majority of the justices shall be necessary to grant such motion. And in all other criminal cases amounting to a felony, where like motion is filed and appeal taken to the law court the concurrence of a majority of the justices shall be necessary to grant such motion, and sentence shall be imposed upon conviction, either by verdict or demurrer.

76 Me. 324; 82 Me. 285; 107 Me. 536; 109 Me. 201; 112 Me. 544; 113 Me. 29.

**Sec. 29. Copy of proceedings in murder cases shall be filed with clerk.** R. S. c. 135, § 28. Whenever any person is convicted of murder, a copy of the indictment, plea, evidence and charge of the presiding justice, certified by the official stenographer, shall be filed with the clerk of the court where such trial is held. If such stenographer is paid an annual salary, the making and filing of said copy shall be without extra compensation, otherwise the



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expense thereof shall be paid by the county; but this section shall not apply to cases where motion for new trial is filed.

**Sec. 30. In case of error in the sentence, proceedings.** R. S. c. 135, § 29. When a final judgment in any criminal case is reversed by the supreme judicial court, upon a writ of error, on account of error in the sentence, the court may render such judgment therein as should have been rendered, or may remand the case for that purpose to the court before whom the conviction was had.

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## CHAPTER 137.

### Sentence, and Its Execution in Criminal Cases, and the Liberation of Poor Convicts.

- Sections 1-9 Sentences and the Imposition thereof.  
 Sections 10-24 Probation Officers and their Duties.  
 Sections 25-45 Indeterminate Sentences.  
 Sections 46-49 Execution of Sentences.  
 Sections 50-52 Liberation of Poor Convicts.

#### Sentences and the Imposition Thereof.

**Sec. 1. No person shall be punished until convicted; sentence to imprisonment and fine, or to both; costs.** R. S. c. 136, § 1. No person shall be punished for an offense until convicted thereof in a court having jurisdiction of the person and case. When no punishment is provided by statute, a person convicted of an offense shall be imprisoned for less than one year or fined not exceeding five hundred dollars. When it is provided that he shall be punished by imprisonment and fine, or by imprisonment or fine, or by fine and in addition thereto imprisonment, he may be sentenced to either or both. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution; and for violations of sections six to thirteen of chapter forty-two, and of sections twenty-two, twenty-three, twenty-four, twenty-nine and thirty-four of chapter one hundred and twenty-seven, he shall be sentenced to pay such costs.

See 127, § 48; 101 Me. 518; 110 Me. 98.

**Sec. 2. Punishment when convict has been previously sentenced to any state prison.** R. S. c. 136, § 2. When a person is convicted of a crime punishable by imprisonment in the state prison, and it is alleged in the indictment and proved or admitted on trial, that he had been before convicted and sentenced to any state prison by any court of this state, or of any other state, or of the United States, whether pardoned therefor or not, he may be punished by imprisonment in the state prison for any term of years.

**Sec. 3. State prison sentence; imprisonment for misdemeanor.** R. S. c. 136, § 3. Unless otherwise specially provided, all imprisonments for one year or more, shall be in the state prison; and all for a less term, in the county jail or house of correction. When it is provided that imprisonment