

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

EIGHTH REVISION

THE
REVISED STATUTES

OF THE
STATE OF MAINE

PASSED SEPTEMBER 20, 1944, AND TAKING EFFECT
DECEMBER 30, 1944

VOLUME II



By the Authority of the Legislature

AUGUSTA
KENNEBEC JOURNAL PRINT

Fines and Forfeitures Recovered by Indictment

Sec. 18. Fines and forfeitures recovered by indictment unless otherwise provided. R. S. c. 143, § 16. All fines and forfeitures, imposed as punishment for offenses or for violations or neglects of statute duties, may, when no other mode is expressly provided, be recovered by indictment; and when no other appropriation is expressly made, they inure to the county where the offense is prosecuted.

59 Me. 191.

CHAPTER 133.

MAGISTRATES IN CRIMINAL CASES.

Sections 1-7	Municipal Courts.
Sections 8-10	Trial Justices.
Sections 11-14	Powers of Magistrates.
Sections 15-18	Search Warrants.
Sections 19-20	Summonses for Witnesses, and Their Fees.
Sections 21-24	Appeals from Magistrates.
Sections 25-28	Fees of Magistrates.

Municipal Courts

Sec. 1. Municipal court terms. 1931, c. 162, § 2. 1933, c. 118, §§ 5, 6. All municipal courts shall have terms for the transaction of criminal business, which terms shall commence on the return days of the civil terms as set forth in their respective charters and shall continue to and include the days prior to the next civil return days.

Sec. 2. Criminal jurisdiction of municipal courts; fines, penalties, and costs to be paid over; juvenile courts. R. S. c. 144, § 1. 1931, c. 162, § 1; c. 241, § 1. 1933, c. 18; c. 118, §§ 5, 6. 1935, c. 84, § 12. 1939, c. 293, § 1. 1943, c. 322, § 1. Each municipal court shall have jurisdiction, concurrent with the superior court and with all other municipal courts in the counties where they are located, of all crimes and offenses including violations of any statute, or by-law of a town, village corporation, or local health officer, or breaches of the peace, not punishable by imprisonment in the state prison, and may for such crimes and offenses impose any of the fines or sentences provided by law to be imposed therefor. All fines, penalties, and costs imposed by such courts paid to the jailer after commitment of a respondent shall be paid over by him monthly as provided in section 5 of chapter 137.

Judges of municipal courts within their respective jurisdictions shall have exclusive original jurisdiction over all offenses, except for a capital, or otherwise infamous crime, committed by children under the age of 17 years, and when so exercising said jurisdiction shall be known as juvenile courts. Any adjudication or judgment under the provisions of sections 4 to 7, inclusive, shall be that the child was guilty of juvenile delinquency, and no such adjudication or judgment shall be deemed to constitute a conviction for crime. Provided,

however, that for the purpose of determining the guilt of any person over the age of 17 years charged as an accessory to any offense committed by a child under the age of 17 years, such offense shall be deemed to be the same as if committed by a person over 17 years of age.

See § 14; c. 136, § 35. re notice of arrest to parent etc. of child and notice to probation officer; 26 Me. 73; 27 Me. 282; 37 Me. 133; 39 Me. 478; 47 Me. 465; *72 Me. 468; *73 Me. 281; *84 Me. 272; *104 Me. 354; 123 Me. 412.

Sec. 3. Provisions for bail in municipal courts. 1933, c. 38. All recognizances or bail given in any municipal court, in compliance with any provision of law to secure the appearance of a respondent in a criminal prosecution, shall continue in force until the case pending against such respondent is finally disposed of, either by sentence or the finding of probable cause, and need not be renewed, and the sureties on such recognizances or bail shall be responsible on their original recognizance or bail for the appearance of the principal at any and all times to which the case in which said recognizance or bail was given is continued; provided, however, that this provision shall not apply to bail or recognizances given before bail commissioners.

Sec. 4. Hearings on juvenile cases. 1931, c. 241, § 2. 1933, c. 118, §§ 5, 6. Sessions of municipal courts held under the provisions of the 2nd paragraph of section 2 and sections 4 to 7, inclusive, shall be at such times and at such places within their jurisdiction as the court may determine, and hearings may be adjourned from time to time as justice may require. In the hearing of any such case the general public shall be excluded and only such persons admitted as have a direct interest in the case. Records of such cases shall not be open to inspection by the public except by permission of the court.

Sec. 5. Special probation officers for juveniles. 1931, c. 241, § 3. 1933, c. 118, §§ 5, 6. 1937, c. 238, § 6. The judge of any municipal court may appoint special probation officers to care for offenders under the age of 17 years whenever it shall appear to him that such action will best promote the interests of all concerned. Such special probation officers shall be reimbursed by the county for actual expenses incurred in the performance of their duties.

Sec. 6. Powers of the court in juvenile cases. 1931, c. 241, § 4. 1933, c. 118, §§ 5, 6. 1937, c. 197; c. 238, § 6. 1941, c. 245. 1943, c. 177; c. 322, § 2. A municipal court may place children under the age of 17 years under the supervision, care, and control of a probation officer or an agent of the department of health and welfare or may order the child to be placed in a suitable family home subject to the supervision of a probation officer or the department of health and welfare or may commit such child to the department of health and welfare or make such other disposition as may seem best for the interests of the child and for the protection of the community including holding such child for the grand jury or commitment of such child to the Pownal State School upon certification of 2 physicians who are graduates of some legally organized medical college and have practiced 3 years in this state, that such child is mentally defective and that his or her mental age is 12 years or under, or to the state school for boys or state school for girls; but no boy shall be committed to the state school for boys who is under the age of 11 years and no girl shall be committed to the state school for girls who is under the age of 9 years, and no municipal court shall sentence a child under the age of 17 years to jail, reformatory, or prison; any child or his next friend or guardian may appeal to the superior court in the same county in the same manner as in criminal appeals, and the court may accept the personal recognizance of such child,

next friend, or guardian, and said superior court may either affirm such sentence or order of commitment or make such other disposition of the case as may be for the best interests of such child and for the peace and welfare of the community.

See c. 23, § 66, re commitments for under 5 years.

Sec. 7. Support of child committed to custodial agency. 1931, c. 241, § 5. 1933, c. 118, §§ 5, 6. 1937, c. 238, § 6. 1939, c. 153. Whenever a child under the age of 17 years is committed by the court to custody other than that of its parent, such commitment shall be subject to the provisions of sections 239, 240, and 241 of chapter 22. The court may, after giving a parent a reasonable opportunity to be heard, adjudge that such parent shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and if such parent shall wilfully fail or refuse to pay such sum he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence.

Trial Justices

Sec. 8. Jurisdiction of trial justices; bank account for fines etc. R. S. c. 144, §§ 4, 5. 1933, c. 118, § 5. 1935, c. 84, § 12. 1943, cc. 1, 282. Trial justices have jurisdiction of the offenses described in sections 1, 5, 6, 7, 9, and 11 of chapter 119, when the value of the property is not alleged to exceed \$10; they may punish for the 1st offense by a fine of not more than \$10 and by imprisonment for not more than 2 months; and on a 2nd conviction, by a fine of not more than \$20 and by imprisonment for not more than 6 months.

They have jurisdiction of assaults and batteries, breaches of the peace, and violations of any statute or by-law of a town, village corporation, or local health officer, when the offense is not of a high and aggravated nature, and of offenses and misdemeanors, jurisdiction of which is conferred by law, and of all attempts to commit offenses of which they now have jurisdiction by law; and they may try and punish by a fine of not more than \$10, or by imprisonment for not more than 30 days, except as otherwise provided for by law.

Every trial justice shall maintain a bank account in his name as trial justice, in which all fines, costs, and forfeitures received shall be deposited within 72 hours after their receipt.

See § 14; c. 23, §§ 75, 88, re juvenile delinquency; 26 Me. 73; 27 Me. 282; 37 Me. 133; 39 Me. 478; 47 Me. 465; *72 Me. 468; *73 Me. 281; *84 Me. 272; 104 Me. 354; 123 Me. 412.

Sec. 9. Jurisdiction of trial justices in towns where there is a municipal court. R. S. c. 144, § 9. 1933, c. 118, § 5. A trial justice, residing in a town in which there is a municipal court, has the same jurisdiction as other trial justices in the county in all matters, the exclusive jurisdiction of which is not conferred on such court. Warrants issued by trial justices shall be made returnable before any trial justice in the county, and such warrants may be returned before any municipal court in the same county and the same proceedings had thereon as if said warrants had originally issued from said municipal court; and a justice, for issuing one not so returnable, shall be imprisoned for 6 months and pay the costs of prosecution.

53 Me. 548; 80 Me. 94; *117 Me. 399.

Sec. 10. Persons arrested to be brought before trial justice in town where offense occurred; exception. 1939, c. 245. Any person accused of an offense cognizable by trial justices, if brought or ordered to appear by an officer before

a trial justice, shall be brought or ordered to appear before a trial justice holding court within the town where the alleged offense occurred; but if there is no trial justice within said town, then to a trial justice whose usual place of holding court is nearest to where the offense is alleged to have been committed.

Powers of Magistrates

Sec. 11. Magistrates may administer oaths; magistrates may require aid. R. S. c. 144, § 3. 1933, c. 118, § 5. Judges of municipal courts, trial justices, and justices of the peace may administer all oaths required by law, unless another officer is specially required to do it. Upon view of an affray, riot, assault, or battery, within their county, such judges and justices may, without warrant, command the assistance of any sheriff, deputy sheriff, constable, or person present to repress the same and to arrest all concerned therein.

*104 Me. 354.

Sec. 12. Duty of magistrates on receipt of complaints; proceedings. R. S. c. 144, §§ 6, 7, 10. 1933, c. 118, § 5. When complaint is made to any municipal judge or trial justice charging a person with the commission of an offense, he shall carefully examine, on oath, the complainant, the witnesses by him produced, and the circumstances and, when satisfied that the accused committed the offense, shall, on any day, Sundays and holidays not excepted, issue a warrant for his arrest, stating therein the substance of the charge.

He may, and on complaint, shall, cause to be arrested persons found within his county charged with offenses; and those having committed offenses therein who have escaped therefrom; and all persons charged with felonies, offenses, and misdemeanors, and all affrayers, rioters, breakers of the peace, and violators of the law, and may require such offenders to find sureties for keeping the peace; and when the offense on examination is found to be one not within his jurisdiction for trial, he may cause them to recognize with sufficient sureties to appear before the superior court, and, in default thereof, shall commit them.

He may try those brought before him for offenses within his jurisdiction, although the penalty or fine accrues wholly or partly to his town.

Warrants issued by such magistrates in criminal cases shall be under seal, and be signed by them at the time they are issued.

See c. 96, § 6, re signature of recorder or clerk; c. 134, § 6, re right of accused to discharge upon recognizance; 3 Me. 51; 10 Me. 476; 23 Me. 532; 25 Me. 491; 34 Me. 222; 36 Me. 368; 39 Me. 214; *86 Me. 529; *95 Me. 452; 96 Me. 172; 100 Me. 78, 336; 104 Me. 354; 114 Me. 443; 123 Me. 221.

Sec. 13. Authority of clerks of municipal courts. 1943, c. 205. When, by reason of sickness, absence from the county, inability, or vacancy in office, no judge or recorder of a municipal court is available to hold a criminal term, the clerk of such court shall continue criminal matters for not exceeding 10 days and may admit to bail respondents.

Sec. 14. Rule for prosecutions of violation of municipal ordinance. R. S. c. 144, § 8. 1933, c. 118, § 5. 1935, c. 84, § 12. In any prosecution before a municipal court or trial justice for violation of an ordinance or by-law of a city or town, or of any by-law of a village corporation or local health officer, it shall not be necessary to recite such ordinance or by-law in the complaint, or to allege the offense more particularly than in prosecutions under a general statute.

Search Warrants

See Const. of Me. Art. I, § 5, re unreasonable searches prohibited.

Sec. 15. Warrants for search, in what cases may be issued. R. S. c. 144, § 14. A magistrate may issue warrants to search, within the limits of his jurisdiction, any house or place for property stolen, embezzled, or obtained by false tokens or pretenses; for forged or counterfeit coins, bank-bills, or other writings; for tools, machines, or materials used or designed for making the same; or for a dead body unlawfully disinterred, carried away and concealed; and in other cases when such a warrant is authorized by law. Such warrants can be issued only according to the following provisions.

See c. 27, § 106, re search warrants for vessels containing milk or cream held in wrongful possession; c. 33, § 98, re arrest and search for violation of fish and game laws; c. 34, § 6, re search warrants for violation of sea and shore fisheries laws; c. 57, § 85, re search warrants for intoxicating liquor; c. 85, § 44, re town officers may search for gun powder etc.; c. 88, § 205, re search warrants for improperly marked oil and beverage containers; c. 121, §§ 23, 25, re search of houses of ill fame and search for immoral literature etc.; c. 124, § 3, re search warrants for premature veal; c. 126, §§ 12, 13, re search warrants for implements of gambling, and forfeiture thereof; 79 Me. 104; 95 Me. 199.

Sec. 16. Complaint for a search warrant. R. S. c. 144, § 15. The complaint for a warrant to search must be made in writing, sworn to and signed by the complainant, must specially designate the place to be searched, the owner or occupant thereof, and the person or thing to be searched for, and allege substantially the offense in relation thereto; and that the complainant has probable cause to suspect and does suspect that the same is there concealed.

33 Me. 570; *79 Me. 104; 96 Me. 153; 100 Me. 448; 117 Me. 399.

Sec. 17. Warrant, its contents, and how directed and served. R. S. c. 144, § 16. A search warrant shall recite, by reference to the complaint annexed or otherwise, all the essential facts alleged in the complaint, be directed to a proper officer or to a person therein named, and be made returnable like other warrants; and the person or thing searched for, if found, and the person in whose possession or custody the same was found, shall be returned with the warrant before a proper magistrate.

25 Me. 491; 96 Me. 153; *117 Me. 401.

Sec. 18. Search of a dwelling-house. R. S. c. 144, § 17. To authorize the search of a dwelling-house in the night time, the magistrate must be satisfied that it is necessary to prevent the escape or removal of such person or property, and must in his warrant expressly require it.

*95 Me. 199.

Summonses for Witnesses, and Their Fees

Sec. 19. Summonses to witnesses; when witnesses shall recognize. R. S. c. 144, § 11. 1933, c. 118, § 7. Any judge or justice named in section 11, when a warrant is issued by him, may cause such witnesses only as he is satisfied can testify to material facts to be summoned to attend the trial, by inserting their names in the warrant or otherwise; and when the case is appealed or the person is required to appear before a higher tribunal, he may order such witnesses only to recognize for their appearance where the case is to be tried or examined. He may issue summonses for witnesses in criminal cases to appear before any judicial tribunal, at the request of the attorney-general, a county attorney, or the party accused, and he shall express in the summons at whose request they are

summoned; and when summoned for the accused, the witnesses are not required to attend without payment or tender of their legal fees.

See c. 19, § 121, re operation of motor vehicle while under the influence of intoxicating liquor or drug; 39 Me. 61.

Sec. 20. Limitation of costs and fees. R. S. c. 144, § 12. No costs shall be allowed by such magistrate to complainants in any capacity; but this shall not prevent the allowance of their fees as officers to police officers and constables complaining under authority of their town, or when it is made their duty to do so. No witness shall be allowed in a criminal case for more than one travel, or for travel and attendance in more than one case at the same time before any judicial tribunal.

Appeals from Magistrates

Sec. 21. Appeals within 5 days after decision or sentence. R. S. c. 144, § 18. 1937, c. 40. 1943, c. 113. Any person aggrieved at the decision or sentence of such magistrate may, within 5 days after such decision or sentence is imposed, Sunday not included, appeal therefrom to the next superior court to be held in the same county, and the magistrate shall thereupon order such appellant to recognize in a reasonable sum, not less than \$20 with sufficient sureties, to appear and prosecute his appeal and to be committed until the order is complied with. When such appeal is not taken before the adjournment of the session of court at which said sentence is imposed, mittimus shall issue and the respondent shall be committed thereon, under such sentence, but if, after adjournment and commitment as aforesaid and within said 5 days, application in writing is made to such magistrate to enter such appeal, he shall supersede such commitment by his written order to the jailer or other officer, and the respondent shall be brought before him and such appeal allowed and entered as if claimed before adjournment.

1 Me. 230; 96 Me. 498; 100 Me. 126; 104 Me. 354; 130 Me. 241.

Sec. 22. Copies sent to appellate court; failure to prosecute appeal. R. S. c. 144, § 19. The magistrate shall send to the appellate court a copy of the whole process and of all writings before the magistrate. If the appellant does not appear and prosecute his appeal, his default shall be noted on the record; and the court may order the case to be laid before the grand jury, or may issue a *capias* against the body of the appellant, bring him into court, and then affirm the sentence of the magistrate with additional costs.

107 Me. 18; 109 Me. 283; 111 Me. 504; 124 Me. 58.

Sec. 23. Appellant may withdraw appeal and abide by sentence; fees of jailer. R. S. c. 144, § 20. The appellant may, at any time before such copy has been sent to the appellate court, come personally before such magistrate, who may permit him, on motion, to withdraw his appeal and abide by the sentence appealed from; whereupon, he shall be ordered to comply with said sentence and the sureties taken upon the recognizance upon such appeal shall be discharged. If the appellant is detained in jail for want of sureties to prosecute his appeal, he may give notice, in writing, to the jailer, of his desire to withdraw his appeal and abide by the sentence appealed from; whereupon, such jailer shall cause him to be taken before such magistrate, who shall order him to comply with the sentence appealed from, as hereinbefore provided; and in such case the jailer, or officer taking the appellant before the magistrate by his

direction, shall be entitled to the same fees, to be taxed and paid as a part of the costs of prosecution, as are allowed to an officer for serving a mittimus.

109 Me. 283; 126 Me. 330; 132 Me. 433.

Sec. 24. Respondent may appeal without trial. R. S. c. 144, § 21. 1933, c. 118, §§ 1, 8. In all prosecutions before municipal courts or trial justices, the respondent may plead not guilty and waive a hearing, whereupon the same proceedings shall be had as to sentence and appeal as if there had been a full hearing.

Fees of Magistrates

Sec. 25. Limitation of fees of magistrates. R. S. c. 144, § 22. When several warrants are issued by a magistrate where only one is necessary, he shall be allowed only the costs for one complaint and warrant; and when he binds over a party, and the grand jury does not find an indictment against him, or convicts a party and he appeals and is finally acquitted, the magistrate shall have no fees in the case unless the same are certified and approved by the county attorney, and in no case shall he tax other or greater fees than are expressly allowed by law.

See c. 96, § 10, re fees on appeals in criminal cases.

Sec. 26. Costs paid; how to be disposed of. R. S. c. 144, § 23. When the costs in a criminal case are paid to the magistrate as a part of the sentence, he may retain his fees, and pay over the other fees to the persons entitled thereto. If such other fees are not called for in 1 year, they shall be forfeited to the state and paid over to the county treasurer within the time and under the penalty provided in section 5 of chapter 137.

Sec. 27. Allowance of costs by the county commissioners. R. S. c. 144, § 24. When a party accused is acquitted by the magistrate and is not sentenced to pay costs, or does not pay them when so sentenced, and on all legal search warrants, the commissioners of the same county shall examine and correct the bills of costs, including the fees of officers, witnesses and others, and order the same to be paid out of the county treasury to the persons entitled thereto; but when such magistrate, or other person interested in such bill of costs, is one of the commissioners for such county, the superior court shall have the same powers as the commissioners in other cases.

87 Me. 297.

Sec. 28. Fees and costs in appealed cases. R. S. c. 144, §§ 18, 25. In cases carried to a higher court by appeal, recognizance, or commitment, costs shall be taxed by the magistrate and certified with the papers. The magistrate shall be allowed \$1.50 for copies of papers for the appellate court, to be paid out of the county treasury.

87 Me. 297.