

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

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Discard Previous Supplement

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Court on or before the first day of the next term, and be there filed by the clerk as of record. In any action thereon, if the forfeiture is found or confessed, the court may remit so much of the penalty, and on such terms, as it thinks proper. (R. S. c. 131, § 9. 1961, c. 317, § 483.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, deleted “the provisions of” preceding “this chapter” in the present first sen-

tence and substituted “action” for “suit” near the beginning of the present second sentence.

Possession of Firearms by Felons.

Sec. 12-A. Possession of firearms by felons prohibited.—It shall be unlawful for any person who has been convicted of a felony under the laws of the United States or of the state of Maine, or of any other state, to have in his possession any pistol, revolver or any other firearm capable of being concealed upon the person. Anyone violating any of the provisions of sections 12-A to 12-C, inclusive, shall be guilty of a felony, and upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 5 years. (1955, c. 310.)

Sec. 12-B. Definitions.—The following words and phrases when used in sections 12-A to 12-C, inclusive, are defined as follows:

“Pistol,” “revolver” and “firearm” mean a weapon capable of being concealed upon the person and shall include all firearms having a barrel of less than 12 inches in length. (1955, c. 310.)

Sec. 12-C. Application.—The penal provisions of section 12-A shall not apply to any person commissioned as a peace officer, employed as a guard or watchman nor to any person who has not been convicted of a penal offense during the 5-year period next immediately following his discharge or release from prison. (1955, c. 310.)

Chapter 145.

General Provisions Relating to Crimes.

Felony.

Sec. 1. “Felony” defined.

Applied in *State v. Barnette*, 158 Me. 117, 179 A. (2d) 800.

Attempts to Commit Crime.

Sec. 4. Attempt with overt act to commit offense.

Quoted in *Duncan v. State*, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104. Cited in *State v. Michaud*, 150 Me. 479, 114 A. (2d) 352.

Jurisdiction of Crimes.

Sec. 5. Jurisdiction.—The superior court shall have original jurisdiction, exclusive or concurrent, of all offenses except those of which the original exclusive jurisdiction is conferred by law on the district court, the district court acting as a juvenile court and appellate jurisdiction of these, except that the appellate jurisdiction of the superior court regarding offenses of which the original exclusive jurisdiction is conferred upon the district court acting as a juvenile court shall be as provided in chapter 152-A. (R. S. c. 132, § 5. 1959, c. 342, § 15. 1963, c. 402, § 235.)

Effect of amendments. — The 1959 amendment added the words “municipal courts acting as juvenile courts” and added the exception at the end of the section.

The 1963 amendment substituted “the district court” for “municipal courts” three times in the section, substituted “a juvenile court” for “juvenile courts, and trial justices” near the middle of the section and substituted “a juvenile court” for “juvenile courts” near the end of the section.

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Applied in *State v. Barnette*, 158 Me. 117, 179 A. (2d) 800.

Sec. 7. Offenses committed on or near boundary of 2 counties; offenses committed in one and death ensues in another county.

Cited in *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Sec. 10. Acquittal of part of an indictment and conviction of residue.

Counts for felony and misdemeanor may be joined.—It has been generally held under statutes such as this section, that counts for felony and misdemeanor, grow-

ing out of the same transaction and of the general nature and course of trial, may be joined. *State v. London*, 156 Me. 123, 162 A. (2d) 150.

Sufficiency of Complaints and Warrants.

Sec. 11. Sufficient indictment for murder or manslaughter.

Applied in *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Sec. 12. Owner of property, as used in indictment.

Section in no way eliminates necessity of alleging ownership in person other than defendant. *State v. Small*, 156 Me. 10, 157 A. (2d) 874.

Alleging ownership of property taken from corporation.—It is sufficient to allege ownership of property taken from a corporation as being in the corporation. *State v. Small*, 156 Me. 10, 157 A. (2d) 874.

Or from unincorporated association. — An indictment charging the larceny of property belonging to a partnership or an unincorporated association, in the absence

of a statute permitting the property to be laid in the association by name, or in one or more of its officials or members, should allege the property to be in certain named persons who are the individuals composing the partnership or association. *State v. Small*, 156 Me. 10, 157 A. (2d) 874.

Under some circumstances the fact of incorporation need not be alleged. — See *State v. Hume*, 145 Me. 5, 70 A. (2d) 543.

Proof of bailment is evidence of ownership under this section. *State v. Jutras*, 154 Me. 198, 144 A. (2d) 865.

Sec. 14. Unimportant variance between written or printed matter in evidence and indictment not material; process, except for felony, amended.

This section abrogates the common-law rule. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

It allows amendments of indictments charging felonies as to form only. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

But not as to substance.—There is no statutory power authorizing a court to amend an indictment charging a felony insofar as the substance of the charge is concerned. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

The foregoing procedure does not

change or alter the offense as found and returned by the grand jury.—See *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

And defendant suffers no prejudice by such an amendment. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

Amendment must not prejudice accused’s defense.—In amending an indictment, the defense of the accused must not be prejudiced by the amendment. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

And the constitutional provisions concerning the grand jury must be considered

in determining the propriety of any given amendment. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

The amendment of a complaint and warrant as to a material matter must be supported by oath or affirmation under article I, § 5, of the Constitution of Maine and this section. *State v. Chapman*, 154 Me. 53, 141 A. (2d) 630.

Allegation of time is ordinarily a matter of form but under some circumstances it becomes substance. *State v. Mottram*, 155 Me. 394, 156 A. (2d) 383.

Hence, if the averment of date is not essential to the identification of a record of prior conviction, then it is not one of substance but one of form. *State v. Mottram*,

155 Me. 394, 156 A. (2d) 383.

See *State v. Child*, 158 Me. 242, 182 A. (2d) 675, distinguishing *State v. Mottram*, 155 Me. 394, 156 A. (2d) 383.

Surplusage held nonprejudicial.—Addition of the words “to wit, forty miles per hour” to an indictment for the crime under c. 22, § 113 I, “of operating a motor vehicle on a public highway at a careless and imprudent rate of speed greater than was reasonable and proper,” added nothing to the sufficiency of the indictment. It was merely surplusage and the defendant suffered no prejudice by its inclusion in the indictment. *State v. Child*, 158 Me. 242, 182 A. (2d) 675.

Chapter 146.

Magistrates in Criminal Cases.

Sections 1-7. District Court.

Sections 20 to 21-A. Summonses for Witnesses, and Their Fees.

District Court.

Sec. 1. Terms. The district court shall have terms for the transaction of criminal business, which terms shall commence on the return days of the civil terms and shall continue to and include the days prior to the next civil return days. (R. S. c. 133, § 1. 1963, c. 402, § 236.)

Effect of amendment.—The 1963 amendment substituted “The district court” for “All municipal courts” at the beginning of the section and deleted “as set forth in their respective charters” following “civil terms.”

280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Application of amending act.—Section

Sec. 2. Criminal jurisdiction; fines, penalties and costs paid over.—The district court shall have jurisdiction, and concurrent jurisdiction with the superior court, 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 complaints for desertion and non-support or non-support of dependents where either the spouse, dependent or the respondent resides 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 150. (R. S. c. 133, § 2. 1945, c. 293, § 18. 1947, c. 334, § 1. 1957, c. 112. 1959, c. 75, § 3; c. 342, § 16. 1963, c. 402, § 237.)

I. GENERAL CONSIDERATION.

Effect of amendments.—This section was amended twice by the 1959 legislature. P. L. 1959, c. 75, § 3, added the words “and complaints for desertion and non-support or non-support of dependents where either the spouse, dependent or the

respondent resides” after the words “state prison” in the first sentence. Chapter 342, § 16, repealed the second paragraph of the section and a third paragraph which was added by the 1957 amendment, both of which related to juvenile courts.

The 1963 amendment substituted “The