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Chapter 146.

Magistrates in Criminal Cases.

Municipal Courts.

Sec. 2. Criminal jurisdiction; fines, penalties and costs paid over.—Each municipal court shall have jurisdiction, and concurrent jurisdiction 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 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.)

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 Chapter 342, § 16, repealed the second paragraph of the section and a third paragraph which was added by the 1957 amendment, both of which related to juvenile courts.

Cited in State v. Trask, 155 Me. 24, 151 A. (2d) 280.

II. JUVENILE COURTS.

For present provisions as to juvenile courts, see c. 152-A.

History of juvenile law.

See also Morton v. Hayden, 154 Me. 6, 142 A. (2d) 37.

The Reformatory Act and the Juvenile Delinquency Statute are complementary, not repugnant. Morton v. Hayden, 154 Me. 6, 142 A. (2d) 37.

Sentences of juveniles to reformatory.—The legislature by plain implication made sentences of juveniles to the reformatory permissive when it eliminated from the previous law the prohibition against "reformatory" sentences. (See P. L. 1951, c. 84, § 4; R. S. 1954, c. 146, §§ 2 and 6.) This is so notwithstanding juvenile delinquency is not a crime and a delinquent child is not a criminal. Morton v. Hayden, 154 Me. 6, 142 A. (2d) 37.

Sec. 2-A. Costs and fees in municipal and trial justice courts.—The following provisions shall apply to all trial justice courts and municipal courts:

I. Definitions and limitations: This section applies only to costs and fees arising from the criminal proceedings in trial justice courts and municipal courts. When any criminal case is appealed from such court to the superior court, the latter may tax and impose costs from its proceeding which may not include any fees or costs arising from the proceedings or arrest in the lower court.

Nothing in this section shall be interpreted to prohibit a court from filing a case upon payment of costs without a conviction.

Nothing in this section shall be interpreted to deprive a law enforcement officer of compensation for his services and expenses, but this section may shift the responsibility for providing such compensation.

The term "law enforcement officer" shall include, a state police officer, game warden, coastal warden, state liquor inspector, sheriff, deputy sheriff, municipal police officer, constable and any person whose duty it is to enforce any criminal law of this state by making arrests.

II. Respondent not to be sentenced to pay costs of court as such: A municipal court or trial justice court may not, in any criminal proceeding, sen-

tence any respondent to pay costs of court as such, but may take the costs into consideration and include in any fine imposed a sum adequate to cover all or any part of them without reference to such costs and without taxing them, provided the maximum fine for the particular offense is not exceeded.

III. Reports and records of costs and fees: Such courts need not tax total costs in a criminal proceeding, but shall tax and itemize witness fees which are payable by the county as provided in this section. A law enforcement officer, when acting as the arresting officer, shall itemize his fees on the warrant return.

The court shall within 10 days after the end of each month file either a copy of the monthly report to the county commissioners, or a separate report, the form for which shall be prescribed by the state auditor, with each state department having fees or fines due from such court. The court need not file a bill of costs in any case for any reason. The county commissioners may provide the courts within their county with loose leaf dockets, and require such courts to submit to them each month one carbon copy of each criminal docket entry.

IV. Distribution of fees and fines: All fines collected by the court shall be paid to the county monthly. All fines collected, unless the law governing the particular offense provides otherwise, shall accrue to the county where the court is located.

A deputy sheriff shall be paid by the county the fees as are provided under section 150 of chapter 89 unless such deputy is paid a salary in lieu of such fees.

Municipalities shall be reimbursed by the county for all reasonable expenses incurred by police officers and constables for travel within the state between their employing municipality and any other place within the state when such travel is as a consequence of an arrest, or for the purpose of making an arrest on a criminal warrant or to commit and transport a person to any jail or institution within the state.

The county shall pay the municipality for reasonable expenses incurred by the latter's law enforcement officers for out of state travel involving a crime for which the law provides for extradition of the offender. The county, except in the case of a municipal ordinance violation, shall pay the municipality $4 each time one of the latter's law enforcement officers duly signs, as arresting officer, the return of a criminal warrant, issued by a trial justice or municipal court which is located within that county. Such $4 fee shall be paid within a reasonable time after the county commissioners have met, examined and corrected the monthly report of the court. Such fees shall be paid regardless of the final disposition of the case. Neither the county nor the court shall be required to pay any fee for the services or expense of any municipal law enforcement officer before such a court in any criminal proceeding as an aid, as a witness or in any other capacity.

The county, except in a case where any part of any fine collected would accrue to the state highway commission, shall pay the latter $4 each time a state police officer duly signs, as arresting officer, the return of a criminal warrant issued by a trial justice or municipal court which is located within the county. Such $4 fee shall be paid within a reasonable time after the county commissioners have met, examined and corrected the monthly report of the court. Such fee shall be paid regardless of the final disposition of the case. Neither the county nor the court shall be required to pay any fee for the services or expense of any state police officer, as an aid, a witness or in any other capacity.

In cases involving criminal liability for non-support of dependent children who are wards of the state and of dependent children who are recipients of aid from the state as such dependent children, expense incurred for travel shall

be borne between the county and the state in the proportion that the expense of public aid involved is borne between the municipality concerned and the state. Neither the court nor the county shall be required to pay any fee for the services or expense of any other law enforcement officer before such courts in any criminal proceeding as arresting officer, as an aid, as a witness or in any other capacity. (1957, c. 334, § 10; c. 429, § 86-A; c. 436. 1959, c. 75, § 4.)

Effect of amendments.—This section was amended twice by the 1957 legislature. P. L. 1957, c. 429, § 86-A, which became effective October 31, 1957, rewrote the last paragraph of subsection III. Chapter 436 inserted the present third paragraph in subsection IV.

The 1959 amendment added the next to the last paragraph in subsection IV.

Sec. 3-A. Examination to determine sanity of accused.—A municipal court judge may order a person, who is accused of an offense, to be examined by a physician on the same day as the order, to determine whether or not such person is insane. The cost of such examination shall be paid from the treasury of the county in which the municipal court is located. (1961, c. 246.)

Secs. 4-6. Repealed by Public Laws 1959, c. 342, § 17.

Sec. 7. Support of child committed to custodial agency.—Whenever a child under the age of 17 years is committed by the municipal court, or the municipal court acting as a juvenile court, to custody other than that of its parent, such commitment shall be subject to chapter 25, sections 250, 251 and 252. 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 willfully 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. (R. S. c. 133, § 7. 1959, c. 342, § 18.)

Effect of amendment.—The 1959 amendment added "municipal" after "committed by the," added "or the municipal court acting as a juvenile court" preceding "to custody" and substituted "chapter 25, sections 250, 251 and 252" for "the provisions of sections 250, 251 and 252 of chapter 25" in the first sentence.

Trial Justices.

Sec. 8. Jurisdiction of trial justices; bank account for fines, etc.—Trial justices have jurisdiction of the offenses described in sections 1, 5, 6, 7, 9 and 11 of chapter 132, when the value of the property is not alleged to exceed $10. They may punish for the first offense by a fine of not more than $20 and by imprisonment for not more than 2 months; and on a 2nd conviction, by a fine of not more than $30 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. They may try and punish by a fine of not more than $20 or by imprisonment for not more than 30 days, except as otherwise provided for by law.

(1957, c. 334, § 11.)

Effect of amendment. — The 1957 amendment made the former sentence comprising the first paragraph into two sentences, increased the fine for first offense from $10 to $20 and the fine for second offense from $20 to $30 in such paragraph, and made the former sentence comprising the second paragraph into two sentences and increased the fine in such paragraph from $10 to $20.

As the third paragraph was not changed by the amendment, it is not set out.

Sec. 10. Persons arrested brought before trial justice in town where offense occurred.

Officer required to take prisoner before particular trial justice.

In accord with 1st paragraph in original. See State v. Nolan, 150 Me. 355, 111 A. (2d) 478.

And particular justice has jurisdiction of each offense.

In accord with original. See State v. Nolan, 150 Me. 355, 111 A. (2d) 478.

Ascertainment of "nearest" trial justice.—In determining the statutory meaning of "nearest," the contiguity of town lines is not the test. The ascertainment of the "nearest" trial justice is by measure over the shortest usual route of travel from the alleged locus of the offense to the locus which is the usual place of holding court of the trial justice. State v. Nolan, 150 Me. 355, 111 A. (2d) 478.

Omissions in record sufficient to arrest proceedings under section.—Failure of the record to show that there was no trial justice at Falmouth where the alleged offense occurred, or that the trial justice at Gray, before whom proceedings were brought, had a "usual place" of holding court "nearest to where the offense is alleged to have been committed" is alone sufficient to arrest the proceedings under this section. State v. Nolan, 150 Me. 355, 111 A. (2d) 478.

Powers of Magistrates.

Sec. 13. Duty of magistrates on receipt of complaints.

Sealing of warrant held sufficient.—Where a complaint occupies a top two thirds of a sheet of paper and the warrant the bottom one third of the same sheet, a seal at top of the sheet at the commencement of the complaint is a sufficient ensealing of the warrant under this section. State v. Haines, 153 Me. 465, 138 A. (2d) 460.

Quoted in State v. Chapman, 154 Me. 53, 141 A. (2d) 630.

Appeals from Magistrates.

Sec. 22. Appeals within 5 days after decision or sentence. — 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, or in lieu thereof, when offered, a good and sufficient surety bond duly executed by a surety company authorized to do business in this state, 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. (R. S. c. 133, § 21. 1959, c. 143, § 1.)

Effect of amendment.—The 1959 amendment added all of the language beginning with the words "or in lieu thereof" and ending with the words "in this state", near the end of the first sentence of this section.

The words "next superior court" have always been construed to mean the "next superior court at which criminal cases are cognizable." State v. Hoar, 152 Me. 139, 125 A. (2d) 918.

This section must be interpreted in connection with ch. 106, § 11 which provides for the trial terms of the superior court in the several counties and designates those terms at which criminal business may be transacted. State v. Hoar, 152 Me. 139, 125 A. (2d) 918.

Appeal recorded to wrong term.—In a case where the appeal is correctly taken by the appellant, but without his knowledge or participation the appeal is improperly recorded entirely as a result of error by the magistrate, the appeal should not subsequently be dismissed. But the

responsibility for taking a proper and legal appeal rests upon the appellant and when he is charged with notice that his undesignated appeal is being recorded as to a wrong term, he has a duty to make the correct designation, and if he fails to do so the appeal is a nullity. State v. Hoar, 152 Me. 139, 125 A. (2d) 918.

Sec. 23. Copies sent to appellate court; failure to prosecute appeal.

Failure of trial justice to send copy of brief to superior court.—The fact that a brief (prepared by respondent's counsel, submitted to the trial justice, and read by the trial justice before his decision) was not forwarded by the trial justice to the superior court does not cause the superior court to lose jurisdiction. State v. Whitehead, 151 Me. 135, 116 A. (2d) 618.

Trial de novo upon appeal.—On appeal, the judgment of a lower court is vacated, and the case is removed to the appellate court and copy of record forwarded, and respondent is to be tried and judgment rendered de novo upon both law and fact. State v. Whitehead, 151 Me. 135, 116 A. (2d) 618.

Fees of Magistrates.

Sec. 26. Repealed by Public Laws 1957, c. 334, § 12.

Sec. 27. Repealed by Public Laws 1957, c. 334, § 12.

Sec. 28. Allowance of costs and fees by the county commissioners.—The county commissioners shall examine the monthly reports of trial justice and municipal courts, and the bills of costs of other courts, and correct same regardless of the final disposition of the case, and shall order all fees which are due to officers, witnesses and others to be paid out of the county treasury to the persons entitled thereto; but when one of the county commissioners is the person due to receive such fee, the superior court shall examine and correct such fee and shall in like manner order the same to be paid. Should one of the county commissioners be a magistrate then he shall abstain from examining, correcting and ordering payment of such fees or costs which come through his own court, and the remaining county commissioners shall have full power to do so. (R. S. c. 133, § 27. 1957, c. 334, § 13.)

Effect of amendment. — The 1957 amendment rewrote this section.

Sec. 29. Repealed by Public Laws 1957, c. 334, § 12.

Chapter 147.

Proceedings in Criminal Cases.

Section 33. Waiver of Indictment.

Issue of Process and Arrest.

Sec. 1. Criminal prosecutions by indictment; excepted cases.

II. In proceedings before municipal courts, municipal courts acting as juvenile courts, trial justices and courts martial. (R. S. c. 134, § 1. 1959, c. 342, § 19.)

Effect of amendment.—The 1959 amendment added the words "municipal courts acting as juvenile courts" preceding "trial justices" in subsection II of this section.

As the rest of the section was not affected by the amendment, it is not set out.

Remedies on Recognizances. Discharge of Bail.

Sec. 22. Forfeited recognizances defaulted.—When a person, under recognizance in a criminal case, fails to perform its condition, his default shall