

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1955 SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

**Place in Pocket of Corresponding
Volume of Main Set**

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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 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.

(1955, c. 211, § 2.)

Effect of amendment.—The 1955 amendment changed the first paragraph by increasing the minimum age for commit-

ment to the state school for boys from nine to eleven years. As the second paragraph was not changed, it is not set out.

Trial Justices.

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.

Chapter 147.

Proceedings in Criminal Cases.

Section 33. Waiver of Indictment.

Waiver of Indictment.

Sec. 33. Waiver of indictment; petition; information; notification of rights; additional charges.—Any person charged with an offense not punishable by life imprisonment, who has been bound over to await the action of a grand jury in any superior court, and who desires to waive indictment and have a prompt arraignment upon waiver of said indictment, may file a petition in writing with the clerk of said court requesting prompt arraignment by information.

After the filing of such petition, and after the accused in open court, or before any justice of the superior court in vacation, has been advised of the nature of the offense and of his rights, said accused may waive in open court prosecution by indictment, which waiver shall be recorded. Thereupon the county attorney may proceed against the accused person by information.

The information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged. It shall be signed by the county attorney, and in such cases the superior court, or any justice of the superior

court in vacation, shall have jurisdiction in term time or in vacation as if an indictment had been found, and upon plea of guilty shall thereupon impose sentence, and upon entry of any other plea shall continue the matter to the next term at which criminal trials are held.

The accused person may then be arraigned upon said information at such time as the court, or any justice of the superior court in vacation, may designate, whether in term time or vacation.

The court which binds over an accused person will notify him of his right to apply for waiver of indictment and prompt arraignment as aforesaid.

If the county attorney desires to charge the accused person hereunder with an offense or offenses not punishable by life imprisonment, and not contained in the complaint upon which such accused person has been so bound over, he may, before consenting to proceedings by information, prepare an information or informations setting forth such other offenses and file the same with the clerk of courts and cause the accused to be served with attested copy thereof in order that the accused may have an opportunity to waive indictment upon such other offenses, and an affidavit of such waiver by the accused shall be presented to the court, or any justice of the superior court in vacation, and be recorded.

The superior court shall, by rule, establish forms and petitions to waive indictment hereunder, and may, by rule, make such other regulations or procedure hereunder as justice may require. (1955, c. 187.)

Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34. State Jurisdiction after Federal Court Disposition.

Bail. Arraignment and Trial of Prisoners.

Sec. 15. Facts tried, challenges allowed, as in civil cases.—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, except that, in cases of felonies not punishable by imprisonment for life, 8 peremptory challenges shall be allowed each, to the prosecuting officer and the accused; but no member of a grand jury finding an indictment shall sit on the trial thereof, if challenged therefor by the accused. (R. S. c. 135, § 15. 1955, c. 119.)

Effect of amendment.—The 1955 amendment inserted the provision for eight peremptory challenges in cases of felonies not punishable by life imprisonment.

Witnesses.

Sec. 22. Respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify.

Competency of an accused to testify rests upon this section and depends upon compliance with the words "at his own request but not otherwise." State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

This section is applicable in the joint trial of co-indictees. Each may be a witness for himself, for a co-indictee, or for the State, provided his testimony is given

at his own request, but not otherwise. State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

There must be no element of compulsion to make the accused take the witness stand. He must not be forced to elect whether he will testify. State v. Papalos, 150 Me. 370, 113 A. (2d) 624.