

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1959 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES  
VOLUME 4

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Place in Pocket of Corresponding  
Volume of Main Set

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1959

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**Sec. 26.** Repealed by Public Laws 1957, c. 334, § 12.

**Sec. 27.** Repealed by Public Laws 1957, c. 334, § 12.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**Sec. 29.** Repealed by Public Laws 1957, c. 334, § 12.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.

**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 attorney general or any of the deputy or assistant attorneys general or the county attorney or the assistant county attorney, hereinafter in this section referred to as the prosecuting officer, may proceed against the accused person by information.

The information shall be made under the oath of the prosecuting officer upon information and belief before a justice of the peace or a notary public. It shall be a plain, concise and definite written statement of the essential facts constituting the offense intended to be charged in the complaint. In preparing the information, errors and deficiencies, either in form or substance, appearing in said complaint may be corrected. The information may charge the accused with any lesser offense which is contained in the greater offense intended to be charged in the complaint. It shall be signed by the prosecuting officer, 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 nolo contendere or guilty shall thereupon impose sentence and order its execution or may dispose of the case as provided in chapter 27-A, section 6, and upon entry of any other plea shall continue the matter to the next term at which criminal trials are held. The court, or any justice thereof in vacation, under appropriate circumstances, shall have authority to place the case on file with or without plea, or to grant a motion made by the prosecuting officer to enter a nolle prosequi as to part or all of said information.

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

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

The prosecuting officer upon investigation may elect to charge the accused person with another offense or offenses not punishable by life imprisonment, and not alleged in the complaint upon which such accused person has been so bound over, in which event he may, before consenting to proceedings by information, prepare and sign an information or informations under oath setting forth such offense or offenses, which may be either felonies or misdemeanors, and file the same with the clerk of courts and cause the accused to be served with an attested copy thereof in order that the accused may have an opportunity to waive indictment upon such other offense or offenses, and an affidavit of such waiver by the accused shall be presented to the court, or any justice thereof in vacation, and be recorded, whereupon the case may be handled as hereinbefore provided in this section.

The superior court shall, by rule, establish forms and petitions to waive indictment, and may, by rule, make such other regulations or procedure as justice may require. (1955, c. 187. 1957, c. 3. 1959, c. 209.)

**Effect of amendments.** — The 1957 amendment inserted "or the assistant county attorney" in the second, third and sixth paragraphs.

The 1959 amendment, which rewrote

this section, substituted the designation "prosecuting officer" in the third and sixth paragraphs for both the county attorney and the assistant.