# REVISED STATUTES

OF THE

# STATE OF MAINE

1954

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## 1961 CUMULATIVE SUPPLEMENT

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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.

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# Chapter 148.

## Proceedings in Court in Criminal Cases.



### Bail. Arraignment and Trial of Prisoners.

**Sec. 9. Right of person indicted to speedy trial.**

**Design of section.** — Presumably this section and § 11 are designed to implement the general provisions of the constitution guaranteeing a speedy trial. Couture v. State, 156 Me. 231, 163 A. (2d) 646.

**Sec. 11. Persons indicted for felony furnished with copy of indictment; witnesses summoned at state's expense; counsel assigned in certain cases; compensation.**

**Design of section.**—See note to § 9.

**When defendant to be informed of indictment.**—While there is no provision of law which says that the clerk is under a duty of furnishing one charged with crime with a copy of the indictment where no request therefor has been made, under the facts in Couture v. State, 156 Me. 231, 163 A. (2d) 646, there was a duty on the part of the officials to inform the defendant that an indictment was pending against him, so as to give him an opportunity, if he desired to do so, of requesting a copy of the indictment.

**Sec. 13. Jury for trials of offenses punishable by imprisonment for life impaneled; challenges.**—When a person indicted for an offense punish-

able by imprisonment for life is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance in a box upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as otherwise provided, and all other challenges and objections to the juror drawn shall be made and determined and the juror sworn or set aside before another name is drawn, and so on until the regular panel is completed. The state shall not challenge more than 10 of the jurors peremptorily, and the person indicted shall not challenge peremptorily more than 20 of the jurors while the regular panel is being formed; but he may, before alternate jurors are drawn or before the trial commences, challenge peremptorily 2 of the jurors from the regular panel and he may use whatever remaining challenges of the original 20 he has left to peremptorily challenge their replacements. If alternate jurors are called, the person indicted shall have 2 peremptory challenges only to said alternate jurors and the state shall have one peremptory challenge only to said alternate jurors. The superior court may, by general rules, prescribe the mode of exercising the right of challenge from the panel in all criminal cases. (R. S. c. 135, § 13. 1961, c. 17, § 3.)

**Effect of amendment.**—The 1961 amendment substituted "otherwise" for "herein" near the beginning of the second sentence, inserted "regular" near the end of that sentence and at two places in the third sentence, added "before alternate jurors are drawn or" in the third sentence, added the last clause in that sentence and added the present fourth sentence.

**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.

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

## Proceedings after Verdict.

### Sec. 29. Sentence imposed upon conviction; proviso; form of recognizance; stay of execution of sentence had after commitment.

**Cited** in State v. DeBery, 150 Me. 28, 103 A. (2d) 523.

**Sec. 30. Appeal when punishment is imprisonment for life and in certain other criminal cases.**

**But law court has no jurisdiction of motion in first instance.**

In a prosecution for murder, where there was a motion to the law court for new trial, which was not directed to or passed upon by the presiding justice, the motion was not before the law court. State v. Arsenault, 152 Me. 121, 124 A. (2d) 741.

**A motion for a new trial is not, in felony cases, a waiver of the exception** taken to the refusal of the presiding justice to direct a verdict. State v. Lumbert, 152 Me. 131, 124 A. (2d) 746.

**Quoted** in Palleria v. Farrin Bros. & Smith, 153 Me. 423, 140 A. (2d) 716.

**Sec. 31. Copy of proceedings in murder cases filed with clerk of court and in office of secretary of state; expenses.**—Whenever any person is convicted of murder, a copy of the indictment, plea, evidence and charge of the presiding justice, certified by the official court reporter, shall be filed with the clerk of the court where such trial is held, and the expense thereof shall be paid by the county. A copy of the indictment, plea, evidence and charge of the presiding justice, certified by the official court reporter, shall be filed in the office of the secretary of state, so that it may be used in any pardon hearing before the governor and council, and the expense thereof shall be paid by the state. The state shall pay the expense of having the evidence and charge transcribed by the official court reporter in any murder cases heretofore tried, where a pardon is sought by one serving a life sentence in the state prison who is unable to pay therefor, if he or she claims to be innocent of the crime, the transcript to be filed in the office of the secretary of state for use as provided. (R. S. c. 135, § 31. 1953, c. 420, § 8. 1961, c. 281, § 2.)

**Effect of amendment.**—The 1961 amendment added "and the expense thereof shall be paid by the county" at the end of the first sentence, deleted the former second sentence and made other minor changes.

**Sec. 32. Error in sentence.**

**Applied** in Dwyer v. State, 151 Me. 382, 120 A. (2d) 276.

**Sec. 33. Detention at state prison of certain prisoners.** — When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, and such person is committed to jail pending decision by the supreme judicial court on exceptions, report, motion in arrest of judgment, writ of error, appeal or otherwise, or is committed to jail to await action of a grand jury after a finding of probable cause, the sheriff of the county in which such person is committed to jail may certify, in writing, to any justice of the superior or supreme judicial court, in term time or in vacation, that in his opinion such person is dangerous and liable to attempt to escape from such jail; thereupon such justice may order, after hearing, that said person be transferred and committed to the state prison for safekeeping to await the final decision from the supreme judicial court. The county committing such person to the state prison for safekeeping shall be liable to the state for each such person, a proportional amount of the over-all inmate per capita cost per day based on previous year. (R. S. c. 135, § 33. 1955, c. 247.)

**Effect of amendment.**—The 1955 amendment rewrote the last sentence.

## State Jurisdiction after Federal Court Disposition.

**Sec. 34. Court action after federal court has acted.**—Whenever any federal court finds that a prisoner in any penal institution in this state has been deprived of any of the rights guaranteed to him by the constitution of the United States before, at or after his trial, so that the judgment or sentence or both are erroneous and said court holds the case on its docket pending corrective action

by the proper state official, the attorney general may act as follows. He may file a petition in the superior court of the county where the prisoner was tried and convicted in term time or with any justice of said court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the superior court of conviction or any justice thereof in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of said court and shall set the prisoner down for trial if in term time or bind him over to the next criminal term in said county if in vacation, after setting his bail. If the sentence only is erroneous, the superior court of the county of conviction in term time or any justice thereof in vacation, on presentation of the attorney general's petition as aforesaid, shall recall the erroneous sentence and order it stricken from the records and shall in term time or in vacation sentence the prisoner anew in accordance with the indictment against said prisoner. (1955, c. 121.)

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# Chapter 149.

## Sentence. Probation Officers. Parole. Pardons. Fugitives from Justice.

Sections 38-A to 38-B. Mental Responsibility for Criminal Conduct.

### Sentences and Imposition.

**Sec. 1. No person punished until convicted; costs; concurrent or consecutive sentences.**—No person shall be punished for an offense until convicted thereof in a court having jurisdiction of the person and case. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution, except before a municipal or trial justice court in which courts he may be sentenced to pay a fine sufficient to cover said costs as provided by section 2-A of chapter 146; and except before trial justice and municipal courts, for violations of the provisions of sections 66, 68, 84 and 89 of chapter 61, and of sections 145 to 152, inclusive, of chapter 100, he shall be sentenced to pay such costs.

The court shall rule, and in appropriate cases shall endorse, on the mittimus, that the terms of imprisonment shall be served concurrently or consecutively; or in the event of sentences by payment of a fine, that the commitment for the nonpayment thereof under section 42 be served concurrently or consecutively. In the event the court fails so to rule or endorse, said sentences shall be served concurrently. The provisions of this paragraph shall likewise apply to sentences by payment of a fine and sentences by imprisonment for separate offenses. (R. S. c. 136, § 1. 1957, c. 334, § 14; c. 387, § 19; c. 429, § 87. 1961, c. 242.)

**Effect of amendments.**—The first 1957 amendment inserted the exception at the end of the first clause of the present second sentence and inserted the words "except before trial justice and municipal courts" in the last clause of said second sentence. The second 1957 amendment deleted the former second and third sentences. The first 1957 amendment had made a slight change in the former third sentence. The third 1957 amendment referred to both prior 1957 amendments and again deleted the former third sentence.

The 1961 amendment added the second paragraph.

**Applied** in State v. Blanchard, 156 Me. 30, 159 A. (2d) 304.

**Sec. 1-A. Prior convictions alleged separately; subsequent arraignment.**—In all cases where prior conviction for an identical offense or any other offense affects the sentence which the court may impose in a current principal offense, such prior conviction shall not be alleged in the complaint, information or indictment alleging such principal offense, but shall be alleged in a separate complaint, information or indictment, ancillary to the principal offense, upon