REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Any person charged, by indictment, with an offense not punishable by life imprisonment who is not arraigned at the term at which the indictment is returned and who desires to have a prompt arraignment before the next term of court may file a petition in writing with the clerk of said court requesting prompt arraignment. After the filing of such petition, and after the accused, 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 his right to await arraignment at the next term of court, which waiver shall be recorded. Following such waiver the indictment may then be disposed of as in the case of proceedings by information. (1955, c. 187. 1957, c. 3. 1959, c. 209. 1963, c. 215, §§ 1, 2.)

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.

The 1963 amendment inserted "request arraignment in vacation" in the seventh paragraph and added the present last paragraph.

This section is constitutional. Anderson v. State, 158 Me. 170, 180 A. (2d) 732.

This section is constitutional as to both article I, § 7, of the state constitution and the fourteenth amendment of the federal constitution. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den., 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Purpose.—This section is calculated to procure desirable effects for the state in less expensive and briefer, albeit fair and just, criminal process. But the section notably secures for an accused with consciousness of guilt—and oftentimes and, more creditably, remorse—a dependable method of accelerating his condign punishment without the otherwise unavoidable delay, languishment and misery of awaiting in jail or on bail grand jury consideration and court scheduling. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Section protects rights of liberty.—It is difficult to conceive how the legislature could have expressed a more meticulous consultation of the rights of liberty inhering in man, and a more appreciative recognition of and deference to their dignity and validity, than it has set forth in this section. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

It was adapted from the Federal Rules of Criminal Procedure, Rule 7. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

And it affords an optional and voluntary procedure to a defendant and not an adversary process or one in invitum. Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den. 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34. State Jurisdiction after Federal Court Disposition.

Oath and Duties of Grand Jurors.

Sec. 7. Disclosures improper.

This section is an effective bar to any disclosure that an indictment is pending. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Arrest must precede disclosure.—By the terms of this section, a person is not entitled to know of the existence of an indictment until he has been arrested. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

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.

This section implements article I, § 6, of the Constitution of Maine, relating to speedy trials. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Right to speedy trial, etc.

The right to a speedy trial is a personal privilege which the defendant may waive. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Delays caused by acts of the defendant himself constitute a waiver of his right to a speedy trial. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Hence, the delay which occurred while defendant was a fugitive from justice outside the state, even though he had no knowledge of the pendency of an indictment, was the result of his own acts and constituted a waiver of his right to trial during that period. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

And he could not treat the time during which he was absent from the state as a period during which he is denied a speedy trial. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Sec. 11. Persons indicted for felony furnished with copy of indictment; witnesses summoned at state's expense; counsel assigned in certain cases; compensation.—The clerk shall, without charge, furnish to any person indicted for a crime punishable by imprisonment in the state prison, a copy of the indictment; if he is indicted for a crime punishable by imprisonment for life, the clerk shall furnish a copy of the indictment, a list of the jurors returned and process to obtain witnesses, to be summoned and paid at the expense of the state; if for a crime punishable by imprisonment for a term of years, witnesses shall be summoned and paid at the expense of the state only at the discretion of the court. Before arraignment, competent defense counsel shall be assigned by the superior or district court unless waived by the accused after being fully advised of his rights by the court, in all criminal cases charging a felony, when it appears to the court that the accused has not sufficient means to employ counsel. The superior court shall order reasonable compensation to be paid to counsel out of the county treasury for such services in the superior court. No compensation shall be allowed for such services in the district court. The superior or district court may in criminal cases charging a misdemeanor appoint counsel when it appears to the court that the accused has not sufficient means to employ counsel, but no compensation shall be allowed counsel in such cases. (R. S. c. 135, § 11. 1949, c. 100. 1963, c. 273.)

Effect of amendment.—The 1963 amendment divided the former second sentence into two sentences and rewrote both such sentences. It also added the present fourth and fifth sentences.

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 punishable 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.

Quoted in State v. Mottram, 158 Me. 325, 184 A. (2d) 225.

Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings.

Sec. 26. Witness from another state summoned to testify in this state.—If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this state, is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record within whose territorial jurisdiction the witness is found.

If the witness is summoned to attend and testify in this state, he shall be

tendered the sum of 10¢ a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and $15 for each day that he is required to travel and attend as a witness. In addition, such witness, upon submission of proper vouchers to the court, may be allowed reasonable allowance for meals and lodging at the discretion of the presiding justice. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state. (R. S. c. 135, § 26. 1963, c. 183, §§ 1, 2.)

Effect of amendment.—The 1963 amendment substituted "$15" for "$5" in the first sentence of the second paragraph and inserted the second sentence in such paragraph.

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.

Stated in State v. Hale, 157 Me. 361, 172 A. (2d) 631.

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.)

Chapter 149.

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

Sections 17-A to 17-D. Mental Responsibility for Criminal Conduct.
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 the district court in which court he may be sentenced to pay a fine sufficient to cover said costs as provided in chapter 146, section 2-A; and except