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CHAPTER 105

EXAMINATION, ARRAIGNMENT AND RECOGNIZANCE

SUBCHAPTER I

GENERAL PROVISIONS

§ 801. Examination of persons arrested

Every person arrested for an offense shall be brought before the judge issuing the warrant, or some other in the same county, for examination. The warrant, with a proper return thereon signed by the officer serving it, shall be delivered to the judge who may associate another judge with him in such examination, but no fees shall be taxed for him.

R.S.1954, c. 147, § 9.

§ 802. Discharge on recognizance in county of arrest

If the offense charged is not punishable with imprisonment in the State Prison, the officer shall, on request of the accused, take

him before a judge of the county where he is arrested. Such judge, without examination, may take his recognizance with sufficient sureties for his appearance at the next court, or before any judge having cognizance of the offense in the county where it was committed, and thereupon the accused shall be discharged. The judge shall certify that fact on the warrant, and deliver the same with the recognizance to the officer, who shall immediately deliver them to the clerk of the court or judge before whom the accused recognized to appear.

R.S.1954, c. 147, § 6.

§ 803. Adjournment of examination on recognizance or commitment

A judge may adjourn an examination before him, from time to time, for not more than 10 days at a time, and the accused may recognize with sufficient sureties for his appearance before him at the time of adjournment. If the accused fails to appear at the time of adjournment, the judge may issue a capias to bring said accused before him. If no sufficient sureties are offered, or the offense is not bailable, the accused shall be committed to jail by an order of the judge, stating briefly the offense with which he is charged and that he is committed for examination at a future day therein named, and on the day appointed he may be brought before such judge by his verbal order to the officer committing him or by a written order to any other person.

R.S.1954, c. 147, § 10.

§ 804. Failure to appear

If the party recognizing as provided for in section 803 does not appear at the time of such adjournment, the judge shall record his default and certify the recognizance and such record to the appellate court, there to be proceeded with as forfeited recognizances in criminal cases.

R.S.1954, c. 147, § 11.

§ 805. Scope of examination

When the accused is brought before a judge he shall first examine on oath, in the presence of the accused, the complainant and witnesses for the prosecution, as to all pertinent facts, and then the witnesses in defense. The witnesses on both sides may be examined, each one separately from all the others. The witnesses

for the accused may be kept separate from those against him during the examination, according to the directions of the judge, who may reduce the testimony of any witness to writing, when he thinks it necessary, and require him to sign it.

R.S.1954, c. 147, § 12.

§ 806. Proceedings upon examination; complaint adjudged frivolous or malicious; appeal; probable cause

If on the whole examination it appears that no offense has been committed or that there is not probable cause to charge the accused, he shall be discharged, and on motion of the respondent the judge shall render judgment whether or not the complaint is frivolous or malicious. If the judge judges the complaint to be frivolous or malicious, he shall order the complainant to pay the costs of prosecution and shall issue execution in favor of the county and against the complainant for such sum, and may receive and pay over said costs to the county treasurer for the use of the county, and if the same are not paid, the judge shall return said execution to the county commissioners, for the use of the county. The complainant has the same right of appeal as in civil cases. If it appears that an offense has been committed and that there is probable cause to charge the accused, and the offense is bailable and sufficient bail is offered, it shall be taken and the accused discharged; but if it is not bailable, or no sufficient bail is offered, the accused shall be committed to await trial. If the offense is within the jurisdiction of the judge, he shall try it and award sentence thereon.

R.S.1954, c. 147, § 13.

§ 807. Prisoner not asked how to be tried; dilatory pleas verified

When a person is arraigned on an indictment, he need not be asked how he will be tried. When a plea in abatement or other dilatory plea to an indictment is offered, the court may refuse to receive it until it is verified by affidavit or other evidence.

R.S.1954, c. 145, § 16.

§ 808. Prisoners; bail or discharge if no indictment

Any person in prison charged with a crime punishable by imprisonment for life may be bailed or discharged if he is not in-

dicted at the 2nd term of the court in the county where the crime is alleged to have been committed.

R.S.1954, c. 148, § 8.

§ 809. Standing mute

When a person indicted stands mute, the court shall order the plea of not guilty to be entered, with the same effect as if he had pleaded not guilty.

R.S.1954, c. 148, § 10.

§ 810. Copy of indictment furnished; witnesses; assignment of counsel; 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.1954, c. 148, § 11; 1963, c. 273.

§ 811. Waiver of indictment; petition; information; notification of rights; additional charges; arraignment in vacation

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 in-

dictment 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 Title 34, section 1631, 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 other 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, request arraignment in vacation, and may, by rule, make such other regulations or procedure as justice may require.

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.

SUBCHAPTER II

COMMITMENT OR BINDING OVER

Sec.
851. Sureties to make statement of property.
852. Responsibility of bail.
853. Judge to recognize material witnesses, or commit them.
854. Recognizance for minor.
855. Bail after commitment.
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§ 851. Sureties to make statement of property

Any person offering to recognize before any Judge of the District Court or bail commissioner, as surety for the appearance

before the Superior Court of any respondent in a criminal prosecution, whether such respondent be an appellant from the finding of a Judge of the District Court, or to be ordered to recognize to await the action of the grand jury, or be arrested in vacation on capias issued on an indictment pending in such Superior Court, may be required to file with said judge or bail commissioner a written statement signed and sworn to by said surety, describing all real estate owned by him within the State with sufficient accuracy to identify it, and giving in detail all incumbrances thereon and the value thereof, such valuation to be based on the judgment of said surety. Said certificate shall remain on file with the original papers in said case and a certified copy thereof shall be transmitted by the magistrate taking such bail to the clerk of the court before which said respondent so recognizes for his appearance.

R.S.1954, c. 147, § 14; 1963, c. 402, § 251.

§ 852. Responsibility of bail

All bail shall be responsible for the appearance of their principal at all times during the term of court at which they agree to have him, until verdict or certification of the case to the law court on demurrer or exceptions, unless said bail shall have sooner surrendered him into the custody of the sheriff or jailer of the county in which the case is pending.

R.S.1954, c. 147, § 15.

§ 853. Judge to recognize material witnesses, or commit them

When the accused is committed or is bound over to a higher court for trial, the judge shall order the material witnesses against him to recognize to appear and testify at said court. When he is satisfied that there is reason to believe that any of them will not perform the condition of his own recognizance, he may order him to recognize with sufficient sureties. If, in either case, he refuses to recognize as required, he may be committed to prison and remain until discharged by law.

R.S.1954, c. 147, § 16.

§ 854. Recognizance for minor

Any person may recognize as provided in section 853 for a minor to appear as a witness, or the judge may take the recog-

nizance of such minor in a sum not exceeding $20, which shall be valid notwithstanding such disability.

R.S.1954, c. 147, § 17.

§ 855. Bail after commitment

Any Justice of the Supreme Judicial or Superior Court, or bail commissioner within his county, on application of a prisoner committed before verdict of guilty for a bailable offense, or for not finding sureties to recognize for him, may inquire into the case and admit him to bail.

R.S.1954, c. 147, § 18.

§ 856. Return of examinations and recognizances

All examinations and recognizances taken by a magistrate shall be certified and returned to the county attorney or clerk of the court at which the accused is to appear, on or before the first day of its session. If the magistrate neglects to do so, he may be compelled by order of court or, if that is disobeyed, by attachment for contempt.

R.S.1954, c. 147, § 19.

SUBCHAPTER III

DISMISSAL

Sec.

§ 891. Dismissal on satisfaction of private injury; discharge of recognizance

When a person has recognized or is committed by a judge, or is indicted, or held upon a complaint and warrant for an assault and battery or other misdemeanor, for which the party injured has a remedy by civil action, except felonious assaults, assaults upon or resistance of an officer of justice in the execution of his duty, and assaults and batteries of such officers, if the injured party appears before the judge or court, and in writing acknowledges satisfaction for the injury, the court, on payment of all costs, may stay further proceedings and discharge the defendant. The judge may discharge the recognizance, supersede the

commitment by his written order and discharge the recognizance of the witnesses.

R.S.1954, c. 147, § 20.

§ 892. Discharge filed with clerk or jailer; bar to civil action

Any order discharging recognizances shall be filed in the office of the clerk of the court at which the party and witnesses are to appear. An order superseding a commitment shall be delivered to the jailer. If so filed or delivered, and not otherwise, such order shall bar all remedy by civil action for such injury.

R.S.1954, c. 147, § 21.

SUBCHAPTER IV

REMEDIES ON DEFAULT; DISCHARGE OF BAIL

Sec.
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§ 931. Forfeited recognizances defaulted

When a person, under recognizance in a criminal case, fails to perform its condition, his default shall be recorded and process shall be issued against such of the cognizors as the prosecuting officer directs, but no costs shall be taxed for travel in the action. Any surety may be discharged by paying to the county treasurer, before or after process, the amount for which he is bound as surety, with costs if any, or depositing it with the clerk of the court where the recognizance is filed.

R.S.1954, c. 147, § 22; 1961, c. 317, § 484.

§ 932. Bail exonerated by surrender before default upon recognizance

Bail in criminal cases, at any time before default upon their recognizance, may exonerate themselves by surrendering their principal into court, or to the jailer in the county where the principal is held to appear, and delivering to the jailer a certified copy of the recognizance. The jailer shall receive and detain such principal. Any person, so surrendered, may be afterwards bailed in the same manner as if he had been committed without recognizance.

R.S.1954, c. 147, § 23.

§ 933. Court may remit penalty; sureties may surrender principal in court

When the penalty of a recognizance in a criminal case is forfeited on proceedings against the principal, sureties or witnesses, the court, on application of any defendant, if satisfied that the default of the principal was without the consent or connivance of the bail, may remit all or any part of the penalty; or the sureties may surrender the principal in court at any time before final judgment on the proceedings and may, on application therefor, be discharged by paying costs of the action, provided that the court is satisfied as aforesaid.

R.S.1954, c. 147, § 24; 1961, c. 317, § 485.

§ 934. Liquor cases excepted

Section 933 is not applicable to recognizances taken under Title 28.

R.S.1954, c. 147, § 25.

§ 935. Action on any recognizance dismissed

Whenever in any action on a recognizance taken in any criminal case, it appears that the surety has surrendered the principal into court for sentence, and that the principal has actually been sentenced upon the indictment or complaint on which the recognizance was taken, such action shall be dismissed upon payment of costs.

R.S.1954, c. 147, § 26; 1961, c. 317, § 486.

§ 936. Unessential omissions and defects in recognizances not fatal

No action on any recognizance shall be defeated nor judgment thereon arrested for an omission to record a default of the principal or surety at the proper term, nor for any defect in the form of the recognizance, if it can be sufficiently understood from its tenor at what court the party or witness was to appear, and from the description of the offense charged, that the magistrate was authorized to require and take the same.

R.S.1954, c. 147, § 27.

§ 937. Personal recognizance and cash bail

When a person arrested on a criminal process has been ordered to recognize with sureties for his appearance before any court, he may, instead of giving sureties, at any time give his personal recognizance and deposit in money the amount of the bail which he is ordered to furnish with the clerk of such court; in case there is no clerk, with the justice of such court, and such justice or clerk shall give him a certificate thereof, and upon delivering such certificate to the officer having him in custody, he shall be discharged from such custody.

R.S.1954, c. 147, § 28.

§ 938. Surrender before default

If money has been deposited as provided in section 937, the respondent at any time before default may surrender himself in the same manner that sureties in criminal cases may surrender their principal, and thereupon the money so deposited shall be returned to the respondent or his order.

R.S.1954, c. 147, § 29.

§ 939. Court may order deposit forfeited

In case of the default of the respondent, said court may at any time thereafter order the money deposited to be forfeited, and the said justice or clerk with whom said deposit is made shall thereupon immediately pay over the said money to the county treasurer.

R.S.1954, c. 147, § 30.

§ 940. Surrender after default

At any time after a default, and before the money has been declared forfeited in accordance with section 939 the respondent may surrender himself in the manner provided in section 938, and after deducting any amount which the State has disbursed for the apprehension of the said respondent, the court may order the whole or any part of the remainder of the said money to be returned to the respondent as justice may require.

R.S.1954, c. 147, § 31.

§ 941. Private claims paid out of forfeited recognizances

When the penalty of a recognizance to prosecute an appeal is paid to the clerk of the court or county treasurer, the court may award to any person therefrom the same sum that he would have been entitled to receive from the penalty for the offense, if paid on conviction and not on recognizance.

R.S.1954, c. 147, § 32.