

MAINE STATE LEGISLATURE

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ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1375

H. P. 1092

House of Representatives, March 20, 1979

On Motion of Mr. Hobbins of Saco, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Stetson of Wiscasset.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT Relating to Criminal Appeals and Search Warrants.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 15 MRSA § 55, as repealed and replaced by PL 1965, c. 356, § 18, is repealed and the following enacted in its place:

§ 55. Search warrants; issuance by district judge or complaint justice

A judge of the District Court or a complaint justice shall issue search warrants for any place in the State for such purposes as the Constitution of the United States and the Constitution of Maine permit. The evidence presented to the magistrate in support of the search warrant may consist of affidavits and other evidence under oath which is capable of being reduced to a record for purposes of review. The Supreme Judicial Court shall by rule provide the procedure of the application for and issuance of search warrants; provided, that where no procedure is specified, the judge or complaint justice shall proceed in any reasonable manner which will allow the issuance of a search warrant for any constitutional purpose.

Sec. 2. 15 MRSA § 2115-A, as last amended by PL 1977, c. 564, § 74, is repealed and the following enacted in its place:

§ 2115-A. Appeals by the State

1. Appeals prior to trial. An appeal may be taken by the State in criminal cases on questions of law from the District Court and from the Superior Court to the law court: from an order of the court prior to trial which suppresses any evidence, including, but not limited to, physical or identification evidence or evidence of a confession or admission; from an order which prevents the prosecution from obtaining evidence; from a pretrial dismissal of an indictment, information or complaint; or from any other order of the court prior to trial which, either under the particular circumstances of the case or generally for the type of order in question, has a reasonable likelihood of causing either serious impairment to or termination of the prosecution.

2. Appeals after trial. An appeal may be taken by the State from the Superior Court or the District Court to the law court after trial and after a finding of guilty by a jury or the court from the granting of a motion for a new trial, from arrest of judgment, from dismissal or from other orders requiring a new trial or resulting in termination of the prosecution in favor of the accused, when an appeal of the order would be permitted by the double jeopardy provisions of the Constitution of the United States and the Constitution of Maine.

3. When defendant appeals. When the defendant appeals from a judgment of conviction, it is not necessary for the State to appeal. It may argue that error in the proceedings at trial in fact supports the judgment. The State may also establish that error harmful to it was committed in the trial resulting in the conviction from which the defendant has appealed which should be corrected in the event that the law court reverses on a claim of error by the defendant and remands the case for a new trial. If the case is so reversed and remanded, the law court shall also order correction of the error established by the State.

4. Time. An appeal taken pursuant to subsections 1 or 2 shall be taken within 20 days after the entry of the order, and an appeal taken pursuant to subsection 1 shall also be taken before the defendant has been placed in jeopardy. An appeal taken pursuant to this subsection shall be diligently prosecuted.

5. Approval of Attorney General. In any appeal taken pursuant to subsections 1 or 2, the written approval of the Attorney General shall be required; provided that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General has orally stated that the approval will be granted, the written approval may be filed at a later date.

6. Liberal construction. The provisions of this section shall be liberally construed to effectuate its purpose, or purposes, of insuring that the State is able to proceed to trial with all the evidence it is legally entitled to introduce, in view of the limited ability of the State to have error reviewed after trial.

7. Rules. The Supreme Judicial Court may provide for implementation of this section by rule.

8. Fees and costs. The Supreme Judicial Court shall allow reasonable counsel fees and costs for the defense of appeals under this section.

STATEMENT OF FACT

The first section of this bill is designed to authorize a District Court Judge or complaint justice sitting in one judicial division to issue a search warrant for the seizure of property located in another division and, to make clear what information may be considered by the magistrate, and how it is to be received, in determining whether to issue a search warrant.

The 2nd section delineates the pretrial rulings and orders which may be appealed by the State and clarifies the timing and nature of cross-appeals by the State in criminal cases.