

# MAINE STATE LEGISLATURE

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# FORTY-EIGHTH LEGISLATURE.

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HOUSE.

No. 33.

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## STATE OF MAINE.

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IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SIXTY-NINE.

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AN ACT to define and punish murder and to execute sentence in capital cases.

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*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :*

SECTION 1. The first four sections of the one hundred and eighteenth chapter of the revised statutes, are hereby repealed.

SECT. 2. The seventh and eighth sections of chapter one hundred and thirty-five of the revised statutes, are hereby repealed.

SECT. 3. Murder committed by premeditated design and without provocation, shall be deemed murder of the first degree, and shall be punished with death.

SECT. 4. Murder committed with premeditated design and with express malice aforethought, under provocation proceeding wholly or in part from the per-

4 son murdered, or in perpetrating a crime punishable  
5 by death, shall be deemed murder of the second de-  
6 gree, and shall be punished by death, except as here-  
7 inafter provided.

SECT. 5. When murder is committed otherwise than  
2 is set forth in the preceding sections, it shall be  
3 deemed murder of the third degree, and shall be pun-  
4 ished by imprisonment for life.

SECT. 6. The jury finding a person guilty of murder,  
2 shall find whether he is guilty of murder in the first,  
3 second or third degree; and if in the second degree,  
4 they shall further find whether his guilt is with or  
5 without cause for recommendation to mercy. If the  
6 jury shall find such cause for mercy, and if the judge  
7 presiding shall be satisfied that such finding for mercy  
8 is justified by the evidence, he shall award sentence  
9 of imprisonment for life. And in case of exceptions  
10 or other dilatory proceedings whereby sentence shall  
11 be deferred to a subsequent term of the court, the  
12 judge presiding, in case of a finding of cause for mercy  
13 by the jury, shall enter upon the docket his declara-  
14 tion that he is or is not satisfied that such finding for  
15 mercy is justified by the evidence; and in case of sub-  
16 sequent sentence upon such conviction, the judge  
17 awarding sentence shall be governed by such finding  
18 and declaration, and award sentence as above pro-

19 vided. But if the jury shall find no cause for mercy,  
20 or if the judge presiding shall not be of opinion that  
21 such finding is justified by the evidence, then the sen-  
22 tence shall be the same as in cases of murder of the  
23 first degree.

SECT. 7. When a person is adjudged guilty of mur-  
2 der by confession, in open court, the judge presiding,  
3 from testimony or confession, shall determine the de-  
4 gree of murder, and whether there be or be not cause  
5 for mercy, and award sentence according to such  
6 determination, in the manner set forth in the preceding  
7 section.

SECT. 8. In case of trial of an indictment for murder  
2 in the first or second degree, or for other capital  
3 offence, the judge presiding shall, at the expense of  
4 the county, employ suitable means to preserve an  
5 accurate and full copy of the evidence; and in case of  
6 conviction, upon request of the convict, he shall cor-  
7 rect and certify such evidence to be a true copy of all  
8 the evidence in the case. If the convict moves to set  
9 aside the verdict as against the evidence, such motion  
10 shall go to the full court upon copies of such evidence  
11 for their decision. And in case of sentence of death  
12 awarded upon such conviction, it shall be the duty of  
13 the clerk to transmit to the governor a true and

14 attested copy of such evidence ; and in all cases of  
15 sentence of death the clerk shall transmit to the gover-  
16 nor a copy of the whole record.

SECT. 9. Upon receiving such record and evidence  
2 in cases where a copy of the evidence is required, it  
3 shall be the duty of the governor and council carefully  
4 to review the whole case, and unless the evidence is,  
5 in the opinion of the governor, so unsatisfactory that  
6 he shall be unwilling to inflict the punishment of  
7 death, and shall therefore, with the advice and con-  
8 sent of the council, think it proper to pardon the con-  
9 vict or commute the sentence, or unless by reason of  
10 a recommendation of mercy made by the jury, or for  
11 other cause, he shall think it proper so to pardon the  
12 convict or commute the sentence, he shall issue his  
13 warrant to the sheriff of the county where the convic-  
14 tion took place, and to his deputies, for the execution  
15 of the convict within such short period as shall be  
16 deemed reasonable and proper.

SECT. 10. In case of the discovery of any new and  
2 important evidence at any time after sentence of death,  
3 and before execution thereof, the supreme judicial  
4 court sitting in the county where the trial was had,  
4 upon proper application, may grant a review and new  
5 trial upon review, and when such new trial is to be

6 had, the judge presiding may issue the necessary pro-  
7 cess to bring the accused party before the court ; and  
8 to the end that execution may await the final decision  
9 in such case, any judge of the court in or out of  
10 session, in any county, upon the presentation of the  
11 petition of the convict, with affidavits, showing proper  
12 cause for further inquiry, shall grant a stay or super-  
13 sedeas of the governor's warrant for execution. And  
14 in case of conviction upon new trial so granted, the  
15 like proceedings on the part of the court, the clerk  
16 and the governor and council, shall be had as are here-  
17 inbefore provided in case of conviction upon original  
18 process.

SECT. 11. Warrants for the execution of the sentence  
2 of death shall be issued by the governor, under the  
3 great seal of the state, and directed to the sheriff of  
4 the county in which sentence was awarded, and his  
5 deputies.

SECT. 12. The sentence of death shall in all cases  
2 be inflicted by hanging the convict by the neck till he  
3 is dead, and be executed at the time directed in the  
4 warrant within the walls or enclosed yard of the jail  
5 where the convict is confined, concealed from public  
6 view ; and the sheriff of the county, unless prevented  
7 by sickness or other casualty, and such deputies as he

8 shall designate, shall be present at the place of execu-  
9 tion. He shall request the attorney general, county  
10 attorney, the members of the jury by whom the con-  
11 vict was convicted, and two surgeons, to be present ;  
12 and he shall permit the convict's relatives, his counsel,  
13 such ministers of the gospel as the convict may desire,  
14 and such officers of the jail, constables and military  
15 guard, as the sheriff sees fit, but no others, to be  
16 present.

SECT. 13. Notwithstanding anything hereinbefore  
2 contained, all warrants of the governor for the execu-  
3 tion of the sentence of death heretofore issued, shall  
4 be executed according to the tenor thereof, and the  
5 same and all executions under sentence heretofore  
6 made, shall be by warrant, at the place and in the  
7 manner provided by the revised statutes as they were  
8 before the passage of this act ; and notwithstanding  
9 anything hereinbefore contained, the several statutes  
10 hereby repealed, or so much and such parts thereof  
11 as may be necessary to the end hereinafter expressed,  
12 are to continue in force for the definition and punish-  
13 ment of offences coming within the purview of the  
14 same, whether such offences have now been committed  
15 or shall be committed hereafter and before this act  
16 shall take effect.

STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES, }  
February 10, 1869. }

Reported from the Committee on the Judiciary, by Mr. GILBERT of Bath, and printed under the Joint Rule.

S. J. CHADBOURNE, *Clerk.*