

MAINE STATE LEGISLATURE

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FIFTY-THIRD LEGISLATURE.

HOUSE.

No. 2.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SEVENTY-FOUR.

AN ACT for the better protection of human life in Maine.

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

SECTION. 1. The second section of the one hundred
2 and eighteenth chapter of the revised statutes is hereby
3 amended, by inserting after the word "aforethought,"
4 the words 'and without the provocation of a great
5 wrong,' so that said section, as amended, shall read
6 as follows: When murder is committed with express
7 malice aforethought, and without the provocation of a
8 great wrong, or in perpetrating or attempting to perpe-
9 trate a crime punishable by death, imprisonment for
10 life, or for an unlimited term of years, it shall be
11 deemed murder of the first degree, and punished with
12 death.

SECT. 2. The third section of said chapter is hereby
2 amended, so as to read as follows :

3 “ *Sect. 3.* When murder is committed without ex-
4 press malice aforethought, and is not committed in
5 perpetrating or attempting to perpetrate a crime
6 punishable by death, imprisonment for life, or for an
7 unlimited term of years, and without the provocation
8 of a great wrong, it shall be deemed murder of the
9 second degree, and punished by imprisonment for life.
10 And when murder is committed under the provocation
11 of a great wrong, it shall be deemed murder of the
12 third degree, and punished by imprisonment for life,
13 or for any term of years, at the discretion of the court.
14 But the great wrong, the provocation of which shall
15 be deemed to affect the degree of murder, shall be
16 proved by the prisoner to the full satisfaction of the
17 jury to have been actually done by the person
18 murdered, and not merely to have been threatened or
19 apprehended ; and furthermore, it must be a crime,
20 and that, too, one for which no adequate legal redress
21 exists. And it shall be the duty of the court in-
22 structing any grand jury or traverse jury by whom an
23 accusation of murder is to be examined or tried, care-
24 fully to explain the distinction between the different
25 degrees of murder, and between murder and man-
26 slaughter.”

SECT. 3. The sixth section of said chapter is hereby
2 amended, so as to read as follows :

3 “ *Sect. 6.* Whoever wilfully and maliciously dis-
4 places a switch or rail, disturbs, injures or destroys
5 any part of an engine, car, signal, track or bridge of
6 any railroad, or places any obstruction thereon, with
7 intent that any person or property passing on the same
8 should be thereby injured, and human life is thereby
9 destroyed, shall also be deemed guilty of murder in
10 the first degree, and punished with death. If human
11 life is thereby endangered and not destroyed, or prop-
12 erty is injured, he shall be punished by death, or by
13 solitary imprisonment not less than sixty days, and
14 afterwards by imprisonment and hard labor during life,
15 or for a period of not less than ten years.”

SECT. 4. The seventh section of the one hundred
2 and thirty-fourth chapter of the revised statutes is
3 hereby amended, by adding the following sentence :
4 “ Whenever a grand jury shall present any person for
5 murder, the indictment shall always charge murder in
6 the first degree, leaving it for the jury who shall try
7 the same, to determine under the instructions of the
8 court upon the evidence the degree of murder, if any,
9 of which the defendant is guilty.”

SECT. 5. Every judge of a municipal or police court
2 issuing a warrant for the apprehension of any person

3 charged with capital crime, shall forthwith cause notice
4 thereof to be served on the county attorney of the
5 county by some officer qualified to serve criminal
7 precepts.

SECT. 6. The county attorney of each county shall
2 personally attend all examinations of persons charged
3 with a capital crime within his county, unless prevented
4 by official business in court, or other good cause, in
5 which case he shall appoint a competent attorney of
6 said county, who shall represent the State upon such
7 examination.

SECT. 7. Every magistrate committing a prisoner
2 upon a capital charge, and every sheriff receiving such
3 prisoner into his custody, shall cause immediate return
4 thereof to be filed with the clerk of the judicial courts
5 for the county, and it shall be the duty of any clerk
6 receiving such notice or having information that a
7 prisoner has been committed on a capital charge with-
8 in his county, forthwith to notify the chief justice of
9 the supreme judicial court and the attorney general
10 thereof.

SECT. 8. It shall be the duty of the chief justice
2 on receiving notice of a commitment upon a capital
3 charge within the State, as soon as may be, and within
4 ten days at the farthest, if practicable, to issue his
5 order appointing a special term of the supreme judicial

6 court within and for the county in which the offence is
7 charged, designating one of the justices thereof to pre-
8 side at such special term, which shall be begun on a
9 day fixed by the chief justice in his order, which shall
10 be within thirty days from the date of said order at
11 the farthest, unless the public interest manifestly
12 requires a longer delay. The chief justice shall com-
13 municate his order to the clerk of the courts for such
14 county, who shall thereupon certify such order to the
15 justice so designated, as well as to the county attorney
16 and to the attorney general. The clerk shall also issue
17 special immediate notice to each of the grand jurorr
18 required to attend at the last preceding biennial term
19 for said county, commanding each of them to appear
20 and serve at such special term.

SECT. 9. It shall be the duty of the justice desig-
2 nated in such order to open and preside at such special
3 term, unless prevented by illness or other sufficient
4 cause, but in his absence any justice of said court may
5 open and hold said term and charge the grand jury.
6 It shall be the duty of the county attorney to attend
7 said special session of the grand jury, and the attorney
8 general shall also attend, when practicable. If no
9 presentment is made the prisoner shall be discharged.
10 If the prisoner is indicted for an offence not capital,
11 the court shall forthwith put him to the bar to plead

12 to such indictment, and if he pleads guilty, a suitable
13 sentence shall forthwith be passed; otherwise, the
14 court shall recognize him in a suitable sum to appear
15 at the next regular criminal term for said county,
16 when and where the case shall be heard and disposed
17 of as if the indictment had been presented at such
18 term.

SECT. 10. If the grand jury at such special term
2 find an indictment for a capital crime, the court shall
3 proceed to put the prisoner to the bar to plead to such
4 capital indictment, and if he pleads guilty thereto, the
5 presiding justice shall pass sentence of death forthwith.
6 If the prisoner does not plead guilty, the court may
7 assign him counsel, and shall appoint a day for his
8 trial, which day shall be as early as is consistent with
9 justice and the rights of the prisoner. The court shall
10 also order venires to serve to a suitable number of
11 traverse jurors requiring them to appear on the day
12 appointed, shall give all requisite directions and pass
13 all necessary decrees, and shall then adjourn said
14 special term to said appointed day.

SECT. 11. The clerk shall thereupon give immediate
2 notice to the chief justice, who shall issue an order
3 designating not less than five of his associates to set
4 with him upon said appointed day for the trial of said
5 capital indictment, and shall communicate such order

6 to the clerk aforesaid, whose duty it shall be forthwith
7 to certify such order to each of the associate justices so
8 designated, as well as to the attorney general and the
9 county attorney, both of whom are required to repre-
10 sent the state upon such trial, unless prevented by
11 causes satisfactory to the court.

SECT. 12. On the appointed day the trial shall
2 commence and proceed to the rendition of a verdict,
3 unless the trial shall be postponed, continued or inter-
4 rupted for good legal cause, which cause shall be cer-
5 fied by the chief justice and entered on the record of
6 court. The chief justice shall preside, and the court
7 shall never consist of less than five members. All con-
8 tinuances and adjournments shall be to a day certain,
9 and such special term shall continue irrespective of any
10 intervening criminal or civil terms in said county
11 until the final conclusion of the case.

SECT. 13. All questions of law arising during the
2 trial at any stage, shall be argued, heard and deter-
3 mined by the court, the concurrence of five of whom
4 shall be deemed necessary and sufficient.

SECT. 14. If a verdict of not guilty is rendered, the
2 prisoner shall be discharged. If he is found guilty,
3 but not of a capital offence, a suitable sentence shall
4 be fixed by the court and imposed by the chief justice.
5 If the jury disagree, or if the trial is from any cause

6 ended without a verdict, the court shall forthwith fix
7 a day for a new trial not later than may be required
8 to procure the attendance of another jury, and cause
9 a suitable number of traverse jurors to be summoned,
10 and after passing all necessary orders and giving suit-
11 able directions, shall adjourn such special term to such
12 appointed day, at which time the court shall reassem-
13 ble, or the chief justice and five of his associates by
14 him designated, and shall appear, in either case pro-
15 ceeding with such new trial in the manner hereinbe-
16 fore provided. If a second or other disagreement
17 or interruption shall arise, the same proceedings shall
18 be had for a third or subsequent trial.

SECT. 15. If the traverse jury find the prisoner
2 guilty of capital crime, the court shall, through the
3 chief justice, proceed to pass sentence forthwith, un-
4 less for good legal cause a new trial is granted. The
5 court in passing all capital sentences shall fix the day
6 for the prisoner's execution, which shall be within not
7 less than thirty days nor more than ninety days from
8 the day on which sentence is passed, unless for special
9 reason the court deem it necessary to enlarge the time.
10 And the clerk of the county shall forthwith issue and
11 deliver to the sheriff of the county the warrant for the
12 prisoner's execution within the walls of the county
13 jail on the day fixed by the court. The warrant shall

15 bear the seal of the court, and the title of the chief
16 justice, and the signature of the clerk of the courts for
17 the county where the sentence is passed, and shall be
18 a full and sufficient warrant, authority and precept
19 for the sheriff or officer to whom it is addressed to
20 execute the prisoner therein named ; and to do all and
21 singular the acts therein appointed and declared. But
22 a copy of the record, including the sentence, shall be
23 within ten days after its promulgation transmitted
24 by said clerk to the governor ; and a copy of the evi-
25 dence shall also be prepared as soon as practicable
26 and within the ten if possible, and also forwarded by
27 the clerk to the governor.

SECT. 16. Whenever a capital indictment is found
2 at a regular term of the supreme judicial court, or of
3 the superior court for the county of Cumberland, it
4 shall be the duty of the justice presiding to put the
5 prisoner to the bar to plead thereto ; and if he pleads
6 guilty, he shall be sentenced to death by the justice
7 presiding in the manner hereinbefore provided, except
8 that if in the superior court aforesaid the warrant shall
9 bear title of the justice thereof and the seal of said
10 court, instead of the seal of the supreme judicial court
11 and the title of the chief justice thereof. And copies
12 shall be certified by the clerk of Cumberland county
13 to the governor as hereinbefore provided. If the pris-

14 oner indicted at such regular term does not plead
15 guilty of the capital offence for which he is indicted,
16 the justice presiding shall cause immediate notice to
17 be given to the chief justice of the supreme judicial
18 court, who shall thereupon issue his order for a special
19 criminal term in such county, designating the associate
20 justices of said court to sit with him at such special
21 term for the trial of such prisoner, and the justice
22 presiding at such regular criminal term of the supreme
23 judicial court or superior court aforesaid, shall cause a
24 suitable number of traverse jurors to be summoned to
25 appear at the day appointed by the chief justice for
26 such special term, which shall be held in the manner
27 hereinbefore provided.

SECT. 17. In case of the absence of the chief justice or his sickness or other disability, it shall be lawful for the first associate justice in seniority to act in his place, both in designating a justice to open the special term, in appointing a day therefor, in presiding at the trial, in passing the sentence, and in any and all particulars mentioned in this act.

SECT. 18. In case of a change of venue from any county, a special term shall be called by the chief justice in some other county at a day appointed by him, he designating at least five of his associates to sit with him, and the proceedings shall thereafter be

6 had at such special term in the manner hereinbefore
7 provided.

SECT. 19. No compensation shall be allowed from
2 the state treasury or from any county treasury to any
3 counsellor or attorney for the defence of any prisoner
3 at any stage of the proceedings.

SECT. 20. The right of peremptory challenge is
2 hereby fixed at six challenges for the prisoner and six
3 for the state in capital cases.

SECT. 21. This act takes effect on the first day of
2 May, A. D. 1874, but its provisions shall not affect
3 any trial of any capital crime committed prior to
4 said day, but all indictments for capital crimes com-
5 mitted prior to May 1, 1874, shall be tried and finally
6 determined under the provisions of the law hitherto
7 existing, which is hereby kept in force for said purpose
8 as fully as if this act had not been passed.

SECT. 22. The chief justice and each associate
2 justice holding any special criminal term under the
3 provisions of this act, shall be reimbursed his actual
4 necessary expenses of travel and attendance thereon
5 from the state treasury, upon a certificate of the
6 amount thereof, signed by such justice, and certified
7 by the clerk of the county where the special term was
8 held.

SECT. 23. Sections eight and nine of chapter one hundred thirty-five, and section thirteen and the last sentence of section fourteen of chapter one hundred thirty-four of the revised statutes, are repealed. The tenth section of chapter one hundred thirty-five is amended, by substituting the words "jail or state prison according to the directions of the warrant of the court," for the words "state prison," in line four, and the twelfth section of chapter one hundred thirty-four is amended in the eleventh line, by substituting the word "six" for "ten." And all acts and parts of acts inconsistent with any provision of this act are hereby repealed.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
January 20, 1874. }

Presented by Mr. TALBOT of East Machias, and referred to
the Committee on the Judiciary, and ordered to be printed on his
motion.

S. J. CHADBOURNE, *Clerk.*