

# MAINE STATE LEGISLATURE

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EIGHTY-FIRST LEGISLATURE

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HOUSE

NO. 217

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House of Representatives, February 28, 1923.

Five hundred copies ordered printed and recommitted to  
Committee on Legal Affairs.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Oakes of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND TWENTY-THREE

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AN ACT Relative to Material Witnesses and Bail in Criminal  
Cases.

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

Section 1. Whenever any magistrate, mentioned in section two of chapter one hundred and thirty-five of the revised statutes, shall adjourn an examination in a criminal case before him, whether or not the defendant is in custody, he may bind by recognizance the material witnesses against the defendant to appear and testify at the time and place to which the trial or examination is adjourned; and when he is satisfied that there is reason to believe that any of them are not ready to perform the condition of his own

10 recognizance, he may order him to recognize with sufficient  
11 sureties; and if in either case he refuses to recognize as  
12 required he may be committed to prison and remain until  
13 discharged by law. Any such witnesses so committed for  
14 failure to recognize may be admitted to bail by any justice  
15 of the supreme judicial or superior court or bail commis-  
16 sioner within his county in the same manner as is now pro-  
17 vided in the case of prisoners committed before a verdict of  
18 guilty.

Sect. 2. When a felony has been committed a material  
2 witness may be arrested and detained by any sheriff, deputy  
3 sheriff, constable, city or deputy marshal or police officer,  
4 until a legal warrant and order of a magistrate can be ob-  
5 tained, and they shall be entitled to legal fees for such serv-  
6 ice; but if, in so doing, he acts wantonly or oppressively  
7 or detains a person without an order of a magistrate longer  
8 than is necessary to procure it, he shall be liable to such  
9 person for the damages suffered thereby. Any such wit-  
10 nesses so arrested and detained may be admitted to bail  
11 by any justice of the supreme judicial or superior court or  
12 bail commissioner within his county in the same manner as  
13 is now provided in the case of prisoners committed before  
14 a verdict of guilty.

Sect. 3. Any such magistrate may, with the consent of  
2 the defendant, take or cause to be taken by a magistrate  
3 authorized to take depositions in civil cases, in manner and  
4 form as provided in civil cases, the deposition of a witness

5 whom he finds to be unable to furnish sureties upon his  
6 recognizance in any criminal case as ordered and who is  
7 not the prosecutor or an accomplice; and thereupon the  
8 witness shall be discharged. The county attorney who will  
9 have charge of the case at the trial shall have the same  
10 notice as parties in civil actions of the time and place of  
11 taking the deposition, and the assent of the defendant shall  
12 be endorsed upon the deposition. The fees shall be the  
13 same as in civil cases and shall be paid as other expenses  
14 in criminal cases are paid. The deposition shall be season-  
15 ably transmitted to the court at which the witness was or-  
16 dered to appear. If the witness is unable to attend the trial,  
17 by reason of his absence from the state, or of his death, in-  
18 sanity, illness or infirmity, the deposition may be read in  
19 evidence upon the trial by either party, subject to all legal  
20 objections.

Sect. 4. When any person is held in jail as a material  
2 witness because of his failure to give sureties on his recog-  
3 nizance, the county attorney may inquire as to the impor-  
4 tance of his testimony and the necessity for detaining him  
5 in jail, and if in his opinion the public interests will not suf-  
6 fer by the release of the witness on his own recognizance,  
7 he shall so report to any justice of the supreme judicial or  
8 superior court or to the magistrate committing the witness,  
9 who may thereupon order the witness to be released upon  
10 his recognizance.

Sect. 5. Material witnesses held in jail because of their

2 failure to recognize as required by law, shall as far as pos-  
3 sible consistent with their convenient custody and the pre-  
4 vention of tampering with their testimony, be kept separate  
5 and apart from other prisoners committed to said jail. All  
6 material witnesses so committed to jail shall be entitled to  
7 witness fees for the period during which they are so com-  
8 mitted, to be paid as an expense of the conduct of criminal  
9 cases.

Section 6. An officer who, having the custody of a wit-  
2 ness committed because of his failure to furnish sureties,  
3 causes or permits him to be handcuffed to a person, held in  
4 custody, charged with or sentenced for crime, or to be  
5 transported within a city to or from any court or prison in  
6 a vehicle with such person, shall be punished by a fine of  
7 not more than twenty dollars.

Sect. 7. In all criminal cases no person offering himself  
2 as surety shall be deemed to be insufficient if he deposits  
3 money of an amount equal to the amount of the bail re-  
4 quired of him in such recognizance, or a bank book of a  
5 savings bank or of the savings department of a trust com-  
6 pany doing business in the state, properly assigned to the  
7 clerk or magistrate with whom the same is or is to be de-  
8 posited, and his successors, and satisfactory to the person  
9 authorized to take bail, or deposits non-registered bonds of  
10 the United States or of any county, city or town within  
11 the state equal at their face value to the amount of the bail  
12 required of him in such recognizance.

Sect. 8. A person held in custody or committed upon a  
2 criminal charge, if entitled to be released on bail, or a per-  
3 son held in custody or committed as a witness to a crime,  
4 may, instead of giving surety or sureties, at any time give  
5 his personal recognizance to appear before the court or  
6 magistrate and deposit the amount of the bail which he is  
7 ordered to furnish, in bonds or a properly assigned bank  
8 book, of the kind and in the amount and under the conditions  
9 set forth in section seven for making deposit of like nature,  
10 with the court, clerk of the court, trial justice or magistrate  
11 authorized to take such recognizance, who shall give him  
12 a certificate thereof, and upon delivering said certificate to  
13 the officer in whose custody he is, shall be released. The  
14 court, trial justice or magistrate shall forthwith, upon re-  
15 ceipt of such amount, deposit it with the clerk of the court  
16 or with the trial justice before whom such person was recog-  
17 nized to appear.

Sect. 9. At any time after default of the defendant, the  
2 court or trial justice may order forfeited the money, bonds  
3 or bank books deposited at the time of the recognizance  
4 and the court or clerk of the court with whom the deposit  
5 was made shall thereupon pay to the county treasurer any  
6 money so deposited. The clerk of the court shall immedi-  
7 ately proceed to sell any bonds so deposited either at public  
8 or private sale, and shall forthwith pay the proceeds thereof,  
9 after deducting all expenses connected with such sale, to  
10 the county treasurer and if bank books are so deposited,

11 the said clerk shall collect the amount of bail from the  
12 depository, and pay the same, less the expense of collection,  
13 to the county treasurer.

Sect. 10. The defendant may surrender himself at any  
2 time before a default, in the same manner as sureties in  
3 criminal cases may surrender their principal, and the court  
4 shall thereupon order the bank books to be reassigned and  
5 the money or bonds so deposited to be returned to the per-  
6 son in whose name the deposit is made or to his order. At  
7 any time after default, on the surrender or recaption of  
8 the defendant, the court may order the whole or any part  
9 of the money so deposited or of the bonds, or of the amount  
10 of the net proceeds of the sale of said bonds, or the bank  
11 books, or the whole or any part of the amount collected  
12 from the depository thereunder, to be returned to the person  
13 in whose name the deposit is made or to his order. If the  
14 amount realized by sale or collection pursuant to the preced-  
15 ing section exceeds the amount of the recognizance, the  
16 court shall, on an application made at any time, order such  
17 excess to be returned to the party found by the court to be  
18 entitled thereto.

Sect. 11. Any recognizance given by any person in a  
2 criminal case may be reduced to writing by the magistrate  
3 taking the same and at the request of a county attorney,  
4 sheriff, deputy sheriff, constable, city or deputy marshal or  
5 police officer shall be reduced to writing and in either such  
6 case may be filed and recorded in the registry of deeds in

7 any county of the state in a book kept for the purpose by  
8 such registry. The fees for such recording shall be paid  
9 by the person recording the same and charged as an ex-  
10 pense of prosecution of criminal cases. Such recognizance  
11 shall be filed and recorded in a similar manner to the filing  
12 and recording of attachments of real estate as now provided  
13 by law and when so filed and recorded shall operate upon  
14 the real estate of the principal and sureties in such recog-  
15 nizance in the same manner as an attachment of real estate  
16 now operates and shall be subject to lapse and discharge  
17 in the same manner as attachments of real estate. Any  
18 suit in scire facias brought on any such recognizance so  
19 filed and recorded shall be effectual to continue and perfect  
20 the lien given by such filing and recording of such recog-  
21 nizance in the same manner as now is provided by law  
22 with reference to suits at law in which attachments of real  
23 estate are made and all the provisions of law with refer-  
24 ence to levy on judgments obtained in suits wherein attach-  
25 ments of real estate have been made shall apply to scire  
26 facias actions brought on such recognizances and the judg-  
27 ments obtained therein.