

# MAINE STATE LEGISLATURE

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## CHAPTER 135.

## PROCEEDINGS IN COURT IN CRIMINAL CASES.

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## Oath and Duties of Grand Jurors

**Sec. 1. Clerk shall prepare list of grand jurors.** R. S. c. 146, § 1. Prior to the commencement of each term of the court to which grand jurors are returned, in any county, the clerk of the court shall make out, from the returns on the venire, an alphabetical list of such jurors.

See c. 103, § 2, re preparation of lists of persons qualified to serve as jurors; 36 Me. 130; 38 Me. 201, 300; 49 Me. 576, 594; 51 Me. 397; \*126 Me. 335.

**Sec. 2. Grand jurors' oath.** R. S. c. 146, § 2. When the grand jury is to be impaneled, the clerk shall call the first 2 persons named on the list, and administer the following oath to them: "You, as grand jurors of this county of —, solemnly swear, that you will diligently inquire and true presentment make of all matters and things given you in charge. The state's counsel, your fellows' and your own, you shall keep secret. You shall present no man for envy, hatred or malice; nor leave any man unrepresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God." The other jurors shall then be called, in such divisions as the court orders, and the following oath shall be administered to them: "The same oath which your fellows have taken on their part, you and each of you on your part shall well and truly observe and keep. So help you God."

64 Me. 284.

**Sec. 3. Form of affirmation for grand juror.** R. S. c. 146, § 3. When any person returned as grand juror is conscientiously scrupulous of taking an oath, he may make affirmation, substituting the word "affirm" instead of "swear;" and also the words "This you do under the pains and penalties of perjury," instead of "So help you God."

**Sec. 4. Election of foreman; term of foreman's office.** R. S. c. 146, §§ 4, 5. The grand jury, having been impaneled and instructed by the court, shall retire in company with an officer to their room, and there elect, by ballot, one of their number for foreman, and give notice thereof to the court, and the clerk shall record it. Such foreman shall continue in office during the time for which he was returned; but in case of his sickness or absence, the jury may in like manner elect and announce to the court another foreman who shall serve only during such time as the first regularly elected foreman shall be sick or absent.

**Sec. 5. Oaths of witnesses before grand jury.** R. S. c. 146, § 6. The attorney-general, county attorney, or foreman of the grand jury shall swear or affirm, in presence of the jury, all witnesses who are to testify before them, and a list thereof, stating the cases in which they testify, shall be returned into the court by the foreman before the jury is discharged, and filed and entered on record by

the clerk. The clerk shall not make such list public, until the criminal cases at such terms have been tried or otherwise disposed of.

\*67 Me. 129; 76 Me. 317.

**Sec. 6. Grand jury shall present all offenses. R. S. c. 146, § 7.** Grand juries shall present all offenses cognizable by the court at which they attend; and may appoint one of their number to take minutes of their proceedings to be delivered to the attorney, if the jury so directs; and when they are dismissed before the court adjourns, they may be summoned again, on any special occasion, at such time as the court directs.

4 Me. 444.

**Sec. 7. Disclosures improper to be made by grand jurors and officers of the court. R. S. c. 146, § 8.** No grand juror or officer of the court, unless by order of the court, shall disclose that an indictment for felony has been found against any person not in custody or under recognizance, until he is arrested, except by issuing process for his arrest; nor shall any grand juror state how any member of the jury voted, or what opinion he expressed, on any question before them; and the court, in charging such jury, shall impress on their minds the provisions of this section.

115 Me. 544.

#### Bail. Arraignment and Trial of Prisoners

**Sec. 8. When persons in prison may be bailed or discharged, if not indicted. R. S. c. 146, § 10.** Any person in prison charged with a crime punishable by imprisonment for life may be bailed or discharged if he is not indicted at the second term of the court in the county where the crime is alleged to have been committed.

See Const. of Me., Art. I, § 10, re bailable offences.

**Sec. 9. Right of person indicted to speedy trial. R. S. c. 146, § 11.** Any person in prison under indictment shall be tried or bailed at the next term after the finding thereof, if he demands it, unless the court is satisfied that some of the witnesses on the part of the state have been enticed away, or detained from court by some cause beyond their control; and all persons under indictment for felony, if they have been arrested thereon, shall be tried or bailed at the 2nd term after the finding thereof. Any person indicted, although he has not been arrested, is entitled to a speedy trial, if he demands it in person in open court.

\*118 Me. 203.

**Sec. 10. Standing mute. R. S. c. 146, § 12.** 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.

See c. 132, § 16, re prisoner need not be asked how he will be tried.

**Sec. 11. Persons indicted for felony furnished with copy of indictment; witnesses summoned at state's expense; counsel to be assigned in certain cases; compensation. R. S. c. 146, § 14.** 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 discre-

tion of the court. Competent counsel shall be assigned by the court in cases punishable by imprisonment for life, when it appears that the accused has not sufficient means to employ counsel; and reasonable compensation for the services of counsel shall be allowed by the court, to be paid out of the county treasury.

See § 19; 76 Me. 207.

**Sec. 12. Juror's oath or affirmation.** R. S. c. 146, § 21. The following oath shall be administered to jurors in cases punishable by imprisonment for life: "You swear, that you will well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, according to your evidence. So help you God." In all other criminal cases, the following: "You swear, that you will well and truly try the issue between the state and the defendant, according to your evidence. So help you God." Any juror conscientiously scrupulous of taking an oath, may affirm in the mode described in section 3.

**Sec. 13. Jury for trials of offenses punishable by imprisonment for life, how to be impaneled; challenges.** R. S. c. 146, § 13. When a person indicted for an offense punishable by imprisonment for life, is put upon his trial, the clerk, under the direction of the court, shall place the names of all the traverse jurors summoned and in attendance, in a box, upon separate tickets, and the names, after being mixed, shall be drawn from the box by the clerk, one at a time, for the purpose of constituting a jury of trial. All peremptory challenges, except as herein provided, and all other challenges and objections to the juror drawn, shall be made and determined, and the juror sworn or set aside, before another name is drawn, and so on until the panel is completed. The state shall not challenge more than 10 of the jurors peremptorily, and the person indicted shall not challenge peremptorily more than twenty of the jurors while the panel is being formed; but he may, before the trial commences, challenge peremptorily, two of the jurors from the panel. The superior court may, by general rules, prescribe the mode of exercising the right of challenge from the panel in all criminal cases.

67 Me. 337; \*74 Me. 507; 136 Me. 282.

**Sec. 14. Respondent must be present at trial for felony; not otherwise.** R. S. c. 146, § 22. No person indicted for felony shall be tried unless present during the trial; but persons indicted for less offenses, at their own request and by leave of court, may be tried in their absence, if represented by their attorney.

67 Me. 424; \*118 Me. 215.

**Sec. 15. Facts tried, challenges allowed, as in civil cases.** R. S. c. 146, § 20. Issues of fact joined on indictments shall be tried by a jury drawn and returned in the same manner, and challenges shall be allowed to the prosecuting officer and the accused, as in civil cases; but no member of a grand jury finding an indictment, shall sit on the trial thereof, if challenged therefor by the accused.

Practice and evidence in criminal cases. 19 Me. 227, 401; 21 Me. 18; 26 Me. 317; 29 Me. 336, 563; 30 Me. 30, 183, 344; 31 Me. 63; 32 Me. 372, 585; 34 Me. 40; 37 Me. 331, 363; 38 Me. 575; 39 Me. 65, 69, 92, 296, 361; 40 Me. 560; 43 Me. 108; 45 Me. 329; 46 Me. 531; 47 Me. 450; 48 Me. 238, 366; 51 Me. 364, 390; 53 Me. 127, 331, 549; 54 Me. 28, 579; 55 Me. 213; 65 Me. 469; 67 Me. 337; 74 Me. \*507, \*511; 80 Me. 416; 81 Me. 256; 136 Me. 282.

**Sec. 16. When court may postpone or continue.** R. S. c. 146, § 24. The trial of any criminal case, except for a crime punishable by imprisonment for life, may be postponed by the court to a future day of the same term, or the jury may be discharged therefrom, and the case continued, if justice will thereby be promoted.

85 Me. 171; \*118 Me. 203.

**Sec. 17. View.** R. S. c. 146, § 23. The court may order a view by any jury in a criminal case.

#### Witnesses

**Sec. 18. Recognizance of witnesses.** R. S. c. 146, § 9. When an indictment has been returned into court, any justice of the superior court may order the material witnesses against the respondent or respondents named in the indictment to recognize with sufficient sureties to appear and testify at the trial of said indictment in said court; and if any one of said witnesses refuse or fail to recognize he may be committed to prison and held until discharged by law, and such justice may issue *capias* to bring such witness before the court to give his recognizance, or upon failure or refusal so to recognize to be committed as aforesaid.

**Sec. 19. Prosecuting officer may summon witnesses; no tender of fees to state witnesses.** R. S. c. 146, § 15. The prosecuting officer has the same power as the clerk of the court to issue summonses for witnesses in criminal cases; and no costs shall be taxed for witnesses before the grand jury in a case where no bill is found, nor in complaints against towns for defect of road, unless they recognized so to attend, or were summoned by order of the grand jury or prosecuting officer; nor is it necessary to tender fees to witnesses summoned in behalf of the state.

See § 11.

**Sec. 20. Punishment of state witness for not attending.** R. S. c. 146, § 16. Whoever, having been summoned as a witness in behalf of the state before any court or grand jury, without reasonable cause fails to appear at the time and place designated in the summons, if he is not punished therefor as for contempt, shall be punished, on indictment, by a fine of not more than \$100, or by imprisonment for less than 1 year.

See c. 100, § 124, re liability of witnesses summoned who do not attend.

**Sec. 21. Witnesses are not entitled to fees until the 2nd or 3rd day in continued cases etc.** R. S. c. 146, § 17. No fees in criminal cases continued after the 1st term shall be allowed to witnesses on the part of the state, until the 2nd day of the term in Hancock, Oxford, Franklin, Piscataquis, and Aroostook; nor until the 3rd day in any other county, unless they were summoned at an earlier day; and in all criminal cases, previous to the determination thereof, the court may allow such costs for justices, officers, aids, jurors, and witnesses, as are provided by law, to be paid from the county treasury; but no court or magistrate shall allow any charge for aid or other expenses of the officer in serving a warrant, except his stated fees for service and travel, unless, on his examination upon oath, or on other evidence, they find such additional charges reasonable.

**Sec. 22. Respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify.** R. S. c. 146, § 19. In all criminal trials, the accused shall, at his own request but not otherwise, be a competent witness. He shall not be compelled to testify on cross-examination to facts that would convict, or furnish evidence to convict him of any other crime than that for which he is on trial; and the fact that he does not testify in his own behalf shall not be taken as evidence of his guilt. The husband or wife of the accused is a competent witness.

59 Me. 300; 63 Me. 211; \*65 Me. 240; 72 Me. 534; \*74 Me. 508; 76 Me. 410; 78 Me. 492; 85 Me. 96; 130 Me. 519; 131 Me. 294; 135 Me. 325.

**Sec. 23. Depositions may be taken out of the state; also in the state.** R. S. c. 146, § 19. On application of the defendant in a criminal case, the court may

grant a commission to take the depositions of material witnesses living out of the state, upon interrogatories in the same manner, with the same effect, and subject to exceptions, as in civil causes; the prosecuting officer may join in such commission, and name therein any material witness to be examined on the part of the state; but if, at the trial, the defendant does not use the depositions so taken for him, those taken for the state shall not be used. Upon like application by the defendant in a criminal case, a like commission may issue to take the deposition of a material witness living in the state; but the prosecuting officer shall not name therein any material witness to be examined on the part of the state.

134 Me. 100.

### Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings

**Sec. 24. Definitions applicable to §§ 24-28.** 1939, c. 9, § 1. As used in sections 24 to 28, inclusive, the following words shall have the following meaning:

"Witness" shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

"State" shall include any territory of the United States and District of Columbia.

"Summons" shall include a subpoena, order, or other notice requiring the appearance of a witness.

**Sec. 25. Summoning witness in this state to testify in another state.** 1939, c. 9, § 2. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this state certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending, or grand jury investigation has commenced or is about to commence (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct

that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10c a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and \$5 for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

**Sec. 26. Witness from another state summoned to testify in this state.** 1939, c. 9, § 3. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence, in this state, is a material witness in a prosecution pending in a court of record in this state, or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state. This certificate shall be presented to a judge of a court of record within whose territorial jurisdiction the witness is found.

If the witness is summoned to attend and testify in this state, he shall be tendered the sum of 10c a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending, and \$5 for each day that he is required to travel and attend as a witness. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this state a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this state, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

**Sec. 27. Exemption from arrest and service of process.** 1939, c. 9, § 4. If a person comes into this state in obedience to a summons directing him to attend and testify in this state he shall not while in this state pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

If a person passes through this state while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through this state be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

**Sec. 28. Short title of §§ 24-28.** 1939, c. 9, § 6. Sections 24 to 28, inclusive, may be cited as "Uniform Act to Secure the Attendance of Witnesses from without a State in Criminal Proceedings."



## Proceedings after Verdict

**Sec. 29. Sentence to be imposed upon conviction; proviso; form of recognizance; stay of execution of sentence may be had after commitment. R. S. c. 146, § 26.** Sentence shall be imposed upon conviction, either by verdict or upon demurrer, of a crime which is not punishable by imprisonment for life, provided that the court at the term of conviction may in its discretion continue the matter for sentence, suspend sentence, or stay the execution of sentence, although exceptions are alleged. Questions of law may be reserved on a report signed by the presiding justice, and in such case, and where exceptions are allowed, the defendant may, when the offense charged is bailable, recognize with sureties, in such sum as the court orders, with conditions substantially as follows: "The condition of this recognizance is such that, whereas there is now pending in the court, within and for the county of \_\_\_\_\_, an indictment against the said \_\_\_\_\_ for the offense of \_\_\_\_\_, in the course of the proceedings upon which, questions of law requiring the decision of the justices of the supreme judicial court have arisen; now if said \_\_\_\_\_ shall personally appear before said \_\_\_\_\_ court, to be held in \_\_\_\_\_ and for said county, from term to term, until and including the term of said court next after the certificate of decision shall be received from said justices, and shall abide the decision and order of said court, and not depart without license, then this recognizance shall be void." If he does not so recognize, the court, on request of the defendant upon whom sentence is imposed may allow stay of execution of sentence, in which case commitment shall be to await final decision; otherwise, such commitment shall be in execution of sentence. When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, or any person is committed pending decision on report or exceptions, as herein provided, and remains imprisoned after the adjournment of court, he shall be admitted to bail only by the justice trying him, by some person by said justice appointed therefor or by some other justice of the superior court, or by some justice of the supreme judicial court. If a person shall be so admitted to bail after commitment in execution of sentence, as above provided, such admission to bail shall vacate the effect of the original commitment and the full term of imprisonment shall commence from the date of commitment after final decision.

41 Me. 167; 42 Me. 385; 59 Me. 305; 70 Me. 334; 80 Me. 82; 89 Me. 209; 98 Me. 286; 105 Me. 209; 123 Me. 221, 341; \*126 Me. 330; 129 Me. 239; 132 Me. 102.

**Sec. 30. Appeal when punishment is imprisonment for life and in certain other criminal cases. R. S. c. 146, § 27.** If a motion for a new trial in any case, in which a person has been convicted of any offense for which the punishment is imprisonment for life, is denied by the justice before whom the same is heard, the respondent may appeal from said decision to the next law term of the supreme judicial court; and if 3 justices concur the motion shall be granted. In all other criminal cases amounting to a felony, where like motion is filed and appeal taken to the law court, the concurrence of a majority of the justices sitting and qualified to act in the case shall be necessary to sustain the appeal, and if the appeal is not sustained judgment for the state shall follow.

76 Me. 324; 82 Me. 285; 107 Me. 536; 109 Me. 201; 112 Me. 544; 113 Me. 29; 115 Me. 203, \*220, 373; 117 Me. 226; 118 Me. 164, 477; 119 Me. 18, 600; 121 Me. 117; 123 Me. 307, 312, 341; \*124 Me. 245; 125 Me. 454, 465; 128 Me. 404; 129 Me. 125, 169; 130 Me. 161; 131 Me. 294, 458; 134 Me. 100; 135 Me. 208; 138 Me. 244; 139 Me. 11.

**Sec. 31. Copy of proceedings in murder cases to be filed with clerk of court and in office of secretary of state; expenses; provisions retroactive in certain cases. R. S. c. 146, § 28.** Whenever any person is convicted of murder, a copy

of the indictment, plea, evidence, and charge of the presiding justice, certified by the official stenographer, shall be filed with the clerk of the court where such trial is held. If such stenographer is paid an annual salary, the making and filing of said copy shall be without extra compensation, otherwise the expense thereof shall be paid by the county; but this section shall not apply to cases where a motion for a new trial is filed and granted, as to the evidence and charge in any trial but the last. A copy of the indictment, plea, evidence, and charge of the presiding justice, certified by the official stenographer, shall also be filed in the office of the secretary of state, so that it may be used in any pardon hearing before the governor and council, and the expense thereof shall be paid by the state. The state shall pay the expense of having the evidence and charge transcribed by the official stenographer in any murder cases heretofore tried, where a pardon is sought by one serving a life sentence in the state prison who is unable to pay therefor, if he or she claims to be innocent of the crime, the transcript to be filed in the office of the secretary of state for use as above provided.

**Sec. 32. In case of error in the sentence, proceedings. R. S. c. 146, § 29.** When a final judgment in any criminal case is reversed upon a writ of error, on account of error in the sentence, the court may render such judgment therein as should have been rendered or may remand the case for that purpose to the court before whom the conviction was had.

**Sec. 33. Detention at state prison of certain prisoners authorized. 1933, c. 144.** When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, and such person is committed to jail pending decision by the supreme judicial court on exceptions, report, motion in arrest of judgment, writ of error, appeal, or otherwise, or is committed to jail to await action of a grand jury after a finding of probable cause, the sheriff of the county in which such person is committed to jail may certify, in writing, to any justice of the superior or supreme judicial court, in term time or in vacation, that in his opinion such person is dangerous and liable to attempt to escape from such jail; thereupon such justice may order, after hearing, that said person be transferred and committed to the state prison for safe-keeping to await the final decision from the supreme judicial court. The county committing such person for safe-keeping shall be liable to the state to the amount of \$1 for each day of such imprisonment.