

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
VOLUME 4

**Place in Pocket of Corresponding
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those errors that appear upon the face of the record. *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

A writ of error coram nobis may be petitioned for in the superior court in the county where conviction was had, or judgment rendered, in the case, and where the record is. If the petition is in proper

form and the petition shows on its face a valid cause (when or if proved by the petitioner at a hearing on the writ), the court should order the writ of error coram nobis to issue and hearing should be had thereon. *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

Chapter 130.

Crimes against the Person.

Murder, Assault with Intent and Attempt to Murder.

Sec. 1. Murder, definition.

History of section.—See *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

In this state degrees of murder, etc.

In accord with 1st paragraph in original. See *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Nor is it limited to hatred, etc.

“Malice,” as used in the definition of murder, does not necessarily imply ill will or hatred. It is a wrongful act, known to be such, and intentionally done without just and lawful cause or excuse. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

And all homicide is, etc.

When the fact of killing is proved and nothing further is shown, the presumption of law is that it is malicious and an act of murder. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Voluntary intoxication. — Intoxication

will not reduce to manslaughter where there is malice aforethought, and where there is no provocation or sudden passion. Voluntary intoxication is no excuse for murder. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

The rule regarding the defense of insanity should never be extended to apply to voluntary intoxication in a murder case. It would not only open wide the door to defenses built on frauds and perjuries, but would build a broad, easy turnpike for escape. All that the crafty criminal would require for a well-planned murder, in Maine, would be a revolver in one hand to commit the deed, and a quart of intoxicating liquor in the other with which to build his excusable defense. *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Sec. 6. Assault with intent to murder or kill.

A reckless and wanton disregard of rights of others may, under some circumstances be an assault even where no particular person was singled out or aimed at. *State v. Barnett*, 150 Me. 473, 114 A. (2d) 245.

Intent to kill or do bodily harm may be inferred from circumstances where one acts in a reckless or wanton disregard of the safety of others. *State v. Barnett*, 150 Me. 473, 114 A. (2d) 245.

Manslaughter.

Sec. 8. Manslaughter, definition.

It may result from accident.

In accord with original. See *State v. Arsenault*, 152 Me. 121, 124 A. (2d) 741.

Rape, Assault with Intent.

Sec. 10. Rape, definition.

The essential elements of rape, etc.

In accord with original. See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Resistance is not necessarily an element.

It depends on circumstances. The Maine statute does not say that it is an element. Resistance, if any, and the amount and kind of resistance, is evidence to show consent or lack of consent, and like all

evidence is to be carefully considered by the jury. *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Crime must be committed when woman drugged, etc.

In accord with original. See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

The words "without her consent" and "against her will" are used synonymously. *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Unchastity of the female is no defense, etc.

In accord with original. See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

However, it may be admissible to show consent, etc.

In accord with original. See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

In a prosecution under this section, etc.

In accord with original. See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Instructions.—See *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Assault, Assault and Battery.

Sec. 21. Assault, and assault and battery, definitions.

The ancient doctrine that one must "retreat to the wall" has been discarded by our courts and it is now the almost universal rule that in case of assault and battery the assaulted person may stand his ground and defend himself just as

long as he uses no more force than necessary to repel the attack. *State v. Lumbert*, 152 Me. 131, 124 A. (2d) 746.

Cited in *State v. Barnett*, 150 Me. 473, 114 A. (2d) 245.

Sec. 22-A. False report as to bomb.—Whoever calls out or causes to be called out any fire department, police department or other municipal department, or any portion or persons thereof, by intentionally giving a false report as to the deposit of any bomb or infernal machine in any public place, or in or upon any public conveyance, including but not limited to aircraft, or causes the evacuation of any public place or public conveyance by such false report, knowing such report to be false, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 5 years, or by both. (1957, c. 262.)

Conspiracies, Blacklisting, Threatening Communications and Malicious Vexations.

Sec. 25. Conspiracies in other cases.

Conspiracy to bribe public officer.—See *State v. Papalos*, 150 Me. 370, 113 A. (2d) 624.

Chapter 131.

Crimes against Habitations, Buildings and Property.

Arson and Other Burnings.

Sec. 3. Burning of other buildings, vessels, bridges, etc. — Whoever willfully and maliciously burns any building of his wife or of another not mentioned in section 2, or any motor vehicle, aircraft, vessel, bridge, lock, dam or flume of his wife or of another, shall be punished by imprisonment for not less than one year nor more than 10 years. (R. S. c. 118, § 3. 1957, c. 62.)

Effect of amendment. — The 1957 amendment added motor vehicle and aircraft to the list of articles enumerated.