MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

in determining the propriety of any given amendment. State v. Child, 158 Me. 242, 182 A. (2d) 675.

The amendment of a complaint and warrant as to a material matter must be supported by oath or affirmation under article I, § 5, of the Constitution of Maine and this section. State v. Chapman, 154 Me. 53, 141 A. (2d) 630.

Allegation of time is ordinarily a matter of form but under some circumstances it becomes substance. State v. Mottram, 155 Me. 394, 156 A. (2d) 383.

Hence, if the averment of date is not essential to the identification of a record of prior conviction, then it is not one of substance but one of form. State v. Mottram, 155 Me. 394, 156 A. (2d) 383.

See State v. Child, 158 Me. 242, 182 A. (2d) 675, distinguishing State v. Mottram, 155 Me. 394, 156 A. (2d) 383.

Surplusage held nonprejudicial.—Addition of the words "to wit, forty miles per hour" to an indictment for the crime under c. 22, § 113 I, "of operating a motor vehicle on a public highway at a careless and imprudent rate of speed greater than was reasonable and proper," added nothing to the sufficiency of the indictment. It was merely surplusage and the defendant suffered no prejudice by its inclusion in the indictment. State v. Child, 158 Me. 242, 182 A. (2d) 675.

Chapter 146.

Magistrates in Criminal Cases.

Sections 1-7. District Court.
Sections 20 to 21-A. Summonses for Witnesses, and Their Fees.

District Court.

Sec. 1. Terms. The district court shall have terms for the transaction of criminal business, which terms shall commence on the return days of the civil terms and shall continue to and include the days prior to the next civil return days. (R. S. c. 133, § 1. 1963, c. 402, § 236.)

Effect of amendment.—The 1963 amendment substituted "The district court" for "All municipal courts" at the beginning of the section and deleted "as set forth in their respective charters" following "civil terms."

Application of amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 2. Criminal jurisdiction; fines, penalties and costs paid over. —The district court shall have jurisdiction, and concurrent jurisdiction with the superior court, of all crimes and offenses including violations of any statute or by-law of a town, village corporation or local health officer, or breaches of the peace, not punishable by imprisonment in the state prison, and complaints for desertion and non-support or non-support of dependents where either the spouse, dependent or the respondent resides and may for such crimes and offenses impose any of the fines or sentences provided by law to be imposed therefor. All fines, penalties and costs imposed by such courts paid to the jailer after commitment of a respondent shall be paid over by him monthly as provided in section 5 of chapter 150. (R. S. c. 133, § 2. 1945, c. 293, § 18. 1947, c. 334, § 1. 1957, c. 112. 1959, c. 75, § 3; c. 342, § 16. 1963, c. 402, § 237.)

I. GENERAL CONSIDERATION.

Effect of amendments.—This section was amended twice by the 1959 legislature. P. L. 1959, c. 75, § 3, added the words "and complaints for desertion and non-support or non-support of dependents where either the spouse, dependent or the respondent resides" after the words "state prison" in the first sentence. Chapter 342, § 16, repealed the second paragraph of the section and a third paragraph which was added by the 1957 amendment, both of which related to juvenile courts.

The 1963 amendment substituted "The

district" for "Each municipal" at the beginning of the section and deleted "and with all other municipal courts in the counties where they are located" following "superior court" in the first sentence.

Application of amending act.—See note to § 1.

Applied in State v. Barnette, 158 Me. 117, 179 A. (2d) 800.

Cited in State v. Trask, 155 Me. 24, 151 A. (2d) 280.

II. JUVENILE COURTS.

For present provisions as to juvenile courts, see c. 152-A.

History of juvenile law.

See also Morton v. Hayden, 154 Me. 6, 142 A. (2d) 37.

The Reformatory Act and the Juvenile Delinquency Statute are complementary, not repugnant. Morton v. Hayden, 154 Me. 6, 142 A. (2d) 37.

Sentences of juveniles to reformatory.—The legislature by plain implication made sentences of juveniles to the reformatory permissive when it eliminated from the previous law the prohibition against "reformatory" sentences. (See P. L. 1951, c. 84, § 4; R. S. 1954, c. 146, §§ 2 and 6.) This is so notwithstanding juvenile delinquency is not a crime and a delinquent child is not a criminal. Morton v. Hayden, 154 Me. 6, 142 A. (2d) 37.

Sec. 2-A. Costs and fees in the district court.—The following provisions shall apply to the district court:

I. Definitions and limitations: This section applies only to costs and fees arising from the criminal proceedings in the district court. When any criminal case is appealed from such court to the superior court, the latter may tax and impose costs from its proceeding which may not include any fees or costs arising from the proceedings or arrest in the lower court.

Nothing in this section shall be interpreted to prohibit a court from filing a case upon payment of costs without a conviction.

Nothing in this section shall be interpreted to deprive a law enforcement officer of compensation for his services and expenses, but this section may shift the responsibility for providing such compensation.

The term "law enforcement officer" shall include a state police officer, game warden, state liquor inspector, sheriff, deputy sheriff, municipal police officer, constable and any person whose duty it is to enforce any criminal law of this state by making arrests.

II. Respondent not to be sentenced to pay costs of court as such: The district court may not, in any criminal proceeding, sentence any respondent to pay costs of court as such, but may take the costs into consideration and include in any fine imposed a sum adequate to cover all or any part of them without reference to such costs and without taxing them, provided the maximum fine for the particular offense is not exceeded.

III. Reports and records of costs and fees: Such court need not tax total costs in a criminal proceeding, but shall tax and itemize witness fees which are payable by the county or the state as provided in this section. A law enforcement officer, when acting as the arresting officer, shall itemize his fees on the warrant return.

The court shall at the end of each month file with the monthly report to the treasurer of state an itemized statement of all witness fees and to whom they are payable and the amount of any fine imposed and to whom they are payable. All such fines and fees shall be examined and corrected by the treasurer of state and they shall be paid according to law.

The court shall within 15 days after the end of each month file either a copy of the monthly report to the treasurer of state, or a separate report, the form for which shall be prescribed by the state auditor, with each state department having fees or fines due from such court. The court need not file a bill of costs in any case for any reason.

IV. Distribution of fees and fines: All fines collected by the court shall be paid to the county monthly.

A deputy sheriff shall be paid by the county the fees as are provided under chapter 89, section 150, unless such deputy is paid a salary in lieu of such fees. Municipalities shall be reimbursed by the county for all reasonable expenses incurred by police officers and constables for travel within the state between their employing municipality and any other place within the state when such travel is as a consequence of an arrest, or for the purpose of making an arrest on a criminal warrant or to commit and transport a person to any jail or institution within the state.

The county upon the approval of the county attorney shall pay the municipality for reasonable expenses incurred by the latter's law enforcement officers for out of state travel involving a crime for which the law provides for extradition of the offender. The treasurer of state, except in the case of a municipal ordinance violation, shall pay the municipality $4 each time one of the latter's law enforcement officers duly signs, as arresting officer, the return of a criminal warrant, issued by the district court. Such fees shall be paid only upon final disposition of the case and only in those cases in which the sentence imposed, or a portion thereof, includes the imposition of a fine. In the event of an appeal from the decision of the district court no such fees are to be paid except when such appeal is withdrawn and the original sentence is imposed by the district court. Neither the county nor the treasurer of state shall be required to pay any fee for the services or expense of any municipal law enforcement officer before such a court in any criminal proceeding as an aid, as a witness or in any other capacity.

The treasurer of state, except in a case where any part of any fine collected shall accrue to the state highway commission, shall pay the latter $4 each time a state police officer duly signs, as arresting officer, the return of a criminal warrant issued by the district court. Such fees shall be paid only upon final disposition of the case and only in those cases in which the sentence imposed, or a portion thereof, includes the imposition of a fine. In the event of an appeal from the decision of the district court no such fees are to be paid except when such appeal is withdrawn and the original sentence is imposed by the district court. Neither the county nor the treasurer of state shall be required to pay any fee for the services or expense of any state police officer, as an aid, a witness or in any other capacity.

The treasurer of state, except in the case of a county ordinance violation, shall pay the county $4 each time the latter's law enforcement officers duly sign as arresting officer, the return of a criminal warrant issued by the district court. Such fees shall be paid only upon final disposition of the case and only in those cases in which the sentence imposed, or a portion thereof, includes the imposition of a fine. In the event of an appeal from the decision of the district court no such fees are to be paid except when such appeal is withdrawn and the original sentence is imposed by the district court.

In cases involving criminal liability for non-support of dependent children who are wards of the state and of dependent children who are recipients of aid from the state as such dependent children, expense incurred for travel shall be borne between the county and the state, but shall not be a charge against the district court fund, in the proportion that the expense of public aid involved is borne between the municipality concerned and the state. Neither the court nor the treasurer of state shall be required to pay any fee for the services or expense of any other law enforcement officer before such courts in any criminal proceeding as arresting officer, as an aid, as a witness or in any other capacity. (1957, c. 344, § 10; c. 429, § 86-A; c. 436. 1959, c. 75, § 4. 1963, c. 402, § 238.)

Effect of amendments.—This section was amended twice by the 1957 legislature. P. L. 1957, c. 429, § 86-A, which became effective October 31, 1957, rewrote the last paragraph of subsection III. Chapter 436 inserted the present third paragraph in subsection IV.

The 1959 amendment added the present fifth paragraph in subsection IV.

The 1963 amendment so changed this

section that a detailed comparison is not here practical. Prior to the amendment the section provided for costs and fees in municipal and trial justice courts.

Editor's note.—Section 279 of c. 402, P. L. 1963, provides that all fees and costs payable in and to municipal courts and trial justice courts prior to September 16, 1961, shall thereafter be payable in and to the district court in those cases initiated in a district court after such date.

Section 280 of c. 402 provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 3. Bail.—All recognizances or bail given in the district court, in compliance with any provision of law to secure the appearance of a respondent in a criminal prosecution, shall continue in force until the case pending against such respondent is finally disposed of, either by sentence or the finding of probable cause, and need not be renewed, and the sureties on such recognizances or bail shall be responsible on their original recognizance or bail for the appearance of the principal at any and all times to which the case in which said recognizance or bail was given is continued. This provision shall not apply to bail or recognizances given before bail commissioners. (R. S. c. 133, § 3. 1963, c. 402, § 239.)

Effect of amendment.—The 1963 amendment divided the section into two sentences and substituted "the district" for "any municipal" near the beginning of the present first sentence.

Application of amending act. — See note to § 1.

Sec. 3-A. Examination to determine sanity of accused.—A judge of the district court may order a person, who is accused of an offense, to be examined by a physician on the same day as the order, to determine whether or not such person is insane. The cost of such examination shall be paid from the treasury of the county in which the action is pending. (1961, c. 246. 1963, c. 402, § 240.)

Effect of amendment.—The 1963 amendment substituted "judge of the district court" for "municipal court judge" near the beginning of the section and substituted "action is pending" for "municipal court is located" at the end of the section.

Application of amending act.—See note to § 1.

Secs. 4-6. Repealed by Public Laws 1959, c. 342, § 17.

Sec. 7. Support of child committed to custodial agency.—Whenever a child under the age of 17 years is committed by the municipal court, or the municipal court acting as a juvenile court, to custody other than that of its parent, such commitment shall be subject to chapter 25, sections 250, 251 and 252. The court may, after giving a parent a reasonable opportunity to be heard, adjudge that such parent shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and if such parent shall willfully fail or refuse to pay such sum he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence. (R. S. c. 133, § 7. 1959, c. 342, § 18.)

Effect of amendment.—The 1959 amendment added "municipal" after "committed by the," added "or the municipal court acting as a juvenile court" preceding "to custody" and substituted "chapter 25, sections 250, 251 and 252" for "the provisions of sections 250, 251 and 252 of chapter 25" in the first sentence.

Trial Justices.

Secs. 8-10. Repealed by Public Laws 1963, c. 402, § 241.

Editor's note. — Section 8 had been amended by P. L. 1957, c. 334, § 11.

Application of repealing act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Powers of Magistrates.

Sec. 11. Administer oaths. — Judges of the district court and justices of the peace may administer all oaths required by law, unless another officer is specially required to do it. (R. S. c. 133, § 11. 1963, c. 402, § 242.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "municipal courts, trial justices."

Application of amending act.—See note to § 1.

Sec. 12. Require aid upon view.—Upon view of an affray, riot, assault or battery, judges of the district court may, without warrant, command the assistance of any sheriff, deputy sheriff, constable or person present to repress the same and to arrest all concerned therein. (R. S. c. 133, § 11. 1963, c. 402, § 243.)

Effect of amendment.—The 1963 amendment substituted "judges of the district court" for "within their county, such judges and justices."

Application of amending act.—See note to § 1.

Sec. 13. Duty of magistrates on receipt of complaints.—When complaint is made to the proper officer of the district court charging a person with the commission of an offense, he shall carefully examine, on oath, the complainant, the witnesses by him produced and the circumstances and, when satisfied that the accused committed the offense, shall, on any day, Sundays and holidays not excepted, issue a warrant for his arrest, stating therein the substance of the charge.

(1963, c. 402, § 244.)

Effect of amendment.—The 1963 amendment substituted "the proper officer of the district court" for "any municipal judge or trial justice" near the beginning of the first paragraph.

As the rest of the section was not affected by the amendment, only the first paragraph is set out.

Application of amending act.—See note to § 1.

Sealing of warrant held sufficient.—Where a complaint occupies a top two thirds of a sheet of paper and the warrant the bottom one third of the same sheet, a seal at top of the sheet at the commencement of the complaint is a sufficient ensealing of the warrant under this section. State v. Haines, 153 Me. 465, 138 A. (2d) 460.

Quoted in State v. Chapman, 154 Me. 53, 141 A. (2d) 630.

Sec. 14. Continuances by clerks of district court.—Whenever a district judge is unable to attend court, any clerk of the district court may continue any case in such court for a period of not more than 14 days. (R. S. c. 133, § 13. 1963, c. 402, § 245.)

Effect of amendment.—The 1963 amendment rewrote the section.

Application of amending act.—See note to § 1.

Sec. 15. Violation of municipal ordinance.—In any prosecution before the district court for violation of an ordinance or by-law of a city or town, or of any by-law of a village corporation or local health officers, it shall not be necessary to recite such ordinance or by-law in the complaint, or to allege the offense more particularly than in prosecutions under a general statute. (R. S. c. 133, § 14. 1963, c. 402, § 246.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "a municipal court or trial justice."

Application of amending act.—See note to § 1.

Search Warrants.

Sec. 16. Warrants for search; property subject to seizure.—A judge may issue a search warrant to seize the following property:

I. Stolen property. Stolen or embezzled property.

II. Unlawful possession. Property, the possession of which is unlawful.

III. Means to commit a crime. Property used or possessed with intent to be used as the means of committing a crime or offense or concealed to prevent a crime offense from being discovered.

IV. Evidence of a crime. Property constituting evidence of a crime or tending to show that a particular person committed a crime.

The property described in this section, or any part thereof, may be seized from any place where such property may be located or from the person or possession or control of any person who shall be found to have such property in his possession or under his control. (R. S. c. 133, § 15. 1963, c. 334, § 1.)

Effect of amendment.—The 1963 amendment rewrote this section.

Sec. 17. Complaint.—The complaint for a warrant to search must be made in writing, sworn to and signed by the complainant, must specially designate the place to be searched, the owner or occupant thereof, if known to the complainant, and the person or thing to be searched for, and allege substantially the offense in relation thereto; and that the complainant has probable cause to believe and does believe that the same is there concealed. (R. S. c. 133, § 16. 1963, c. 334, § 2.)

Effect of amendment.—The 1963 amendment inserted "if known to the complainant" and substituted "believe" for "suspect" twice near the end of the section.

Summonses for Witnesses, and Their Fees.

Sec. 20. Summonses to witnesses.—Any judge named in section 11, when a warrant is issued by him, may cause such witnesses only as he is satisfied can testify to material facts to be summoned to attend the trial, by inserting their names in the warrant or otherwise. When the case is appealed or the person is required to appear before a higher tribunal, he may order such witnesses only to recognize for their appearance where the case is to be tried or examined. He may issue summonses for witnesses in criminal cases to appear before any judicial tribunal, at the request of the attorney general, a county attorney or the party accused, and he shall express in the summons at whose request they are summoned; and when summoned for the accused, the witnesses are not required to attend without payment or tender of their legal fees. (R. S. c. 133, § 19. 1963, c. 402, § 247.)

Effect of amendment.—The 1963 amendment divided the former first sentence into two sentences and deleted "or justice" following "judge" near the beginning of the present first sentence.

Application of amending act.—See note to § 1.

Sec. 21. Costs and fees for complaints.—No costs shall be allowed by such magistrate to complainants in any capacity; but this shall not prevent the allowance of their fees as officers to police officers and constables or for their municipalities when such police officers or constables are paid a salary or are paid upon a per diem basis by such municipalities and such officers or constables complain under authority of their municipalities or it is made their duty to do so. No witness shall be allowed in a criminal case for more than one travel, or for travel and attendance in more than one case at the same time before any judicial tribunal. (R. S. c. 133, § 20. 1947, c. 290, § 2. 1963, c. 340, § 3.)

Effect of amendment.—The 1963 amendment rewrote the catchline of this section.

Sec. 21-A. Limitation of costs and fees in criminal cases.—No complainant or witness shall be allowed fees, travel and attendance in a criminal case for more than one complainant on any one day when there are other complaints

against the same respondent arising out of the same transaction before any judicial tribunal. (1963, c. 340, § 4.)

Appeals from Magistrates.

Sec. 22. Appeals within 5 days after decision or sentence. — Any person aggrieved at the decision or sentence of such magistrate may, within 5 days after such decision or sentence is imposed, Sunday not included, appeal therefrom to the next superior court to be held in the same county, and the magistrate shall thereupon order such appellant to recognize in a reasonable sum, not less than $20 with sufficient sureties, or in lieu thereof, when offered, a good and sufficient surety bond duly executed by a surety company authorized to do business in this state, to appear and prosecute his appeal and to be committed until the order is complied with. When such appeal is not taken before the adjournment of the session of court at which said sentence is imposed, mittimus shall issue and the respondent shall be committed thereon, under such sentence, but if, after adjournment and commitment as aforesaid and within said 5 days, application in writing is made to such magistrate to enter such appeal, he shall supersede such commitment by his written order to the jailer or other officer, and the respondent shall be brought before him and such appeal allowed and entered as if claimed before adjournment. (R. S. c. 133, § 21. 1959, c. 143, § 1.)

Effect of amendment.—The 1959 amendment added all of the language beginning with the words "or in lieu thereof" and ending with the words "in this state", near the end of the first sentence of this section.

The words "next superior court" have always been construed to mean the "next superior court at which criminal cases are cognizable." State v. Hoar, 152 Me. 139, 125 A. (2d) 918.

This section must be interpreted in connection with ch. 106, § 11 which provides for the trial terms of the superior court in the several counties and designates those terms at which criminal business may be transacted. State v. Hoar, 152 Me. 139, 125 A. (2d) 918.

Appeal recorded to wrong term.—In a case where the appeal is correctly taken by the appellant, but without his knowledge or participation the appeal is improperly recorded entirely as a result of error by the magistrate, the appeal should not subsequently be dismissed. But the responsibility for taking a proper and legal appeal rests upon the appellant and when he is charged with notice that his undesignated appeal is being recorded as to a wrong term, he has a duty to make the correct designation, and if he fails to do so the appeal is a nullity. State v. Hoar, 152 Me. 139, 125 A. (2d) 918.

Sec. 23. Copies sent to appellate court; failure to prosecute appeal.

Failure of trial justice to send copy of brief to superior court.—The fact that a brief (prepared by respondent's counsel, submitted to the trial justice, and read by the trial justice before his decision) was not forwarded by the trial justice to the superior court does not cause the superior court to lose jurisdiction. State v. Whitehead, 151 Me. 135, 116 A. (2d) 618.

Trial de novo upon appeal.—On appeal, the judgment of a lower court is vacated, and the case is removed to the appellate court and copy of record forwarded, and respondent is to be tried and judgment rendered de novo upon both law and fact. State v. Whitehead, 151 Me. 135, 116 A. (2d) 618.

Sec. 25. Respondent may appeal without trial.—In all prosecutions before the district court, the respondent may plead not guilty and waive a hearing, whereupon the same proceedings shall be had as to sentence and appeal as if there had been a full hearing. (R. S. c. 133, § 24. 1963, c. 402, § 248.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "municipal courts or trial justices."

Application of amending act.—See note to § 1.

Fees of Magistrates.

Secs. 26, 27. Repealed by Public Laws 1957, c. 334, § 12.

Sec. 28. Allowance of costs and fees by the county commissioners. —The county commissioners shall examine the monthly reports of trial justice and municipal courts, and the bills of costs of other courts, and correct same regardless of the final disposition of the case, and shall order all fees which are due to officers, witnesses and others to be paid out of the county treasury to the persons entitled thereto; but when one of the county commissioners is the person due to receive such fee, the superior court shall examine and correct such fee and shall in like manner order the same to be paid. Should one of the county commissioners be a magistrate then he shall abstain from examining, correcting and ordering payment of such fees or costs which come through his own court, and the remaining county commissioners shall have full power to do so. (R. S. c. 133, § 27. 1957, c. 334, § 13.)

Effect of amendment. — The 1957 amendment rewrote this section.

Sec. 29. Repealed by Public Laws 1957, c. 334, § 12.

Chapter 147.

Proceedings in Criminal Cases.

Section 33. Waiver of Indictment. Arraignment in Vacation.

Issue of Process and Arrest.

Sec. 1. Criminal prosecutions by indictment; excepted cases.

II. District courts and courts martial. In proceedings before the district court, the district court acting as a juvenile court and courts martial. (R. S. c. 134, § 1. 1959, c. 342, § 19. 1963, c. 402, § 249.)

Effect of amendments.—Prior to the 1963 amendment, subsection II read "In proceedings before municipal courts, municipal courts acting as juvenile courts, trial justices and courts martial." The 1959 amendment had added the words "municipal courts acting as juvenile courts" preceding "trial justices."

As the rest of the section was not affected by the amendments, it is not set out.

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Quoted in Tuttle v. State, 158 Me. 150, 180 A. (2d) 608, cert. den., 371 U. S. 879, 83 S. Ct. 151, 9 L. Ed. (2d) 116.

Sec. 2. Justices and magistrates may issue processes.—The justices of the supreme judicial court and of the superior court and judges of the district court, in the manner provided in chapter 146, in vacation or term time, may issue processes for the arrest of persons charged with offenses. (R. S. c. 134, § 2. 1963, c. 402, § 250.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "municipal courts and trial justices in their counties."

Application of amending act. — See note to § 1.

Sec. 4. Arrests without warrant; liability.

Officer need not be in uniform.—An officer, out of uniform, has a right and duty to arrest a defendant for operating a vehicle while under the influence of intoxicating liquor by virtue of this section; the provisions of c. 22, § 153, and c. 84, §