

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

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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.

Fees of Magistrates.

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 Repealed by Public Laws 1957, c. 334, § 12.

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 Repealed by Public Laws 1957, c. 334, § 12.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 Repealed by Public Laws 1957, c. 334, § 12.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

Issue of Process and Arrest.

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

II. In proceedings before municipal courts, municipal courts acting as juvenile courts, trial justices and courts martial. (R. S. c. 134, § 1. 1959, c. 342, § 19.)

Effect of amendment.—The 1959 amendment added the words "municipal courts acting as juvenile courts" preceding "trial justices" in subsection II of this section. As the rest of the section was not affected by the amendment, it is not set out.

Remedies on Recognizances. Discharge of Bail.

Sec. 22. Forfeited recognizances defaulted.—When a person, under recognizance in a criminal case, fails to perform its condition, his default shall

be recorded and process shall be issued against such of the cognizors as the prosecuting officer directs, but no costs shall be taxed for travel in the action. Any surety may be discharged by paying to the county treasurer, before or after process, the amount for which he is bound as surety, with costs if any, or depositing it with the clerk of the court where the recognizance is filed. (R. S. c. 134, § 22. 1961, c. 317, § 484.)

Effect of amendment.—The 1961 amendment divided this section into two sentences and substituted “action” for “suit” at the end of the present first sentence.

Sec. 24. Court may remit penalty; or sureties may surrender principal in court.—When the penalty of a recognizance in a criminal case is forfeited on proceedings against the principal, sureties or witnesses, the court, on application of any defendant, if satisfied that the default of the principal was without the consent or connivance of the bail, may remit all or any part of the penalty; or the sureties may surrender the principal in court at any time before final judgment on the proceedings and may, on application therefor, be discharged by paying costs of the action, provided that the court is satisfied as aforesaid. (R. S. c. 134, § 24. 1961, c. 317, § 485.)

Effect of amendment.—The 1961 amendment substituted “proceedings” for “scire facias” in two places in this section and substituted “the action” for “suit” near the end of the section.

Sec. 26. Action on any recognizance dismissed.—Whenever in any action on a recognizance taken in any criminal case, it appears that the surety has surrendered the principal into court for sentence, and that the principal has actually been sentenced upon the indictment or complaint on which the recognizance was taken, such action shall be dismissed upon payment of costs. (R. S. c. 134, § 26. 1961, c. 317, § 486.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit of scire facias” near the beginning of this section and substituted “action” for “suit” near the end of the section.

Waiver of Indictment.

Sec. 33. Waiver of indictment; petition; information; notification of rights; additional charges.—Any person charged with an offense not punishable by life imprisonment, who has been bound over to await the action of a grand jury in any superior court, and who desires to waive indictment and have a prompt arraignment upon waiver of said indictment, may file a petition in writing with the clerk of said court requesting prompt arraignment by information.

After the filing of such petition, and after the accused in open court, or before any justice of the superior court in vacation, has been advised of the nature of the offense and of his rights, said accused may waive in open court prosecution by indictment, which waiver shall be recorded. Thereupon the attorney general or any of the deputy or assistant attorneys general or the county attorney or the assistant county attorney, hereinafter in this section referred to as the prosecuting officer, may proceed against the accused person by information.

The information shall be made under the oath of the prosecuting officer upon information and belief before a justice of the peace or a notary public. It shall be a plain, concise and definite written statement of the essential facts constituting the offense intended to be charged in the complaint. In preparing the information, errors and deficiencies, either in form or substance, appearing in said complaint may be corrected. The information may charge the accused with any lesser offense which is contained in the greater offense intended to be charged in the complaint. It shall be signed by the prosecuting officer, and in such cases the superior court, or any justice of the superior court in vacation, shall have jurisdiction, in term time or in vacation, as if an indictment had been found, and

upon plea of nolo contendere or guilty shall thereupon impose sentence and order its execution or may dispose of the case as provided in chapter 27-A, section 6, and upon entry of any other plea shall continue the matter to the next term at which criminal trials are held. The court, or any justice thereof in vacation, under appropriate circumstances, shall have authority to place the case on file with or without plea, or to grant a motion made by the prosecuting officer to enter a nolle prosequi as to part or all of said information.

The accused person may then be arraigned upon said information at such time as the court, or any justice thereof in vacation, may designate, whether in term time or vacation.

The court which binds over an accused person shall notify him of his right to apply for waiver of indictment and prompt arraignment.

The prosecuting officer upon investigation may elect to charge the accused person with another offense or offenses not punishable by life imprisonment, and not alleged in the complaint upon which such accused person has been so bound over, in which event he may, before consenting to proceedings by information, prepare and sign an information or informations under oath setting forth such offense or offenses, which may be either felonies or misdemeanors, and file the same with the clerk of courts and cause the accused to be served with an attested copy thereof in order that the accused may have an opportunity to waive indictment upon such other offense or offenses, and an affidavit of such waiver by the accused shall be presented to the court, or any justice thereof in vacation, and be recorded, whereupon the case may be handled as hereinbefore provided in this section.

The superior court shall, by rule, establish forms and petitions to waive indictment, and may, by rule, make such other regulations or procedure as justice may require. (1955, c. 187. 1957, c. 3. 1959, c. 209.)

Effect of amendments. — The 1957 amendment inserted "or the assistant county attorney" in the second, third and sixth paragraphs. This section, substituted the designation "prosecuting officer" in the third and sixth paragraphs for both the county attorney and the assistant.

The 1959 amendment, which rewrote

Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34 State Jurisdiction after Federal Court Disposition.

Bail, Arraignment and Trial of Prisoners.

Sec. 9. Right of person indicted to speedy trial.

Design of section. — Presumably this section and § 11 are designed to implement the general provisions of the constitution guaranteeing a speedy trial. *Couture v. State*, 156 Me. 231, 163 A. (2d) 646.

Sec. 11. Persons indicted for felony furnished with copy of indictment; witnesses summoned at state's expense; counsel assigned in certain cases; compensation.

Design of section.—See note to § 9. **When defendant to be informed of indictment.**—While there is no provision of law which says that the clerk is under a duty of furnishing one charged with crime with a copy of the indictment where no request therefor has been made, under the facts in *Couture v. State*, 156 Me. 231, 163 A. (2d) 646, there was a duty on the part of the officials to inform the defendant that an indictment was pending against him, so as to give him an opportunity, if he desired to do so, of requesting a copy of the indictment.

Sec. 13. Jury for trials of offenses punishable by imprisonment for life impaneled; challenges.—When a person indicted for an offense punish-