

MAINE STATE LEGISLATURE

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OF THE
STATE OF MAINE
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1963 CUMULATIVE SUPPLEMENT

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THE MICHIE COMPANY
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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 Repealed by Public Laws 1957, c. 334, § 12.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 Repealed by Public Laws 1957, c. 334, § 12.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, §

151, which require police officers to be in uniform, only apply when vehicles are stopped merely for purposes of examina-

tion. *State v. Steckino*, 158 Me. 186, 181 A. (2d) 247.

Commitment or Binding Over.

Sec. 14. Sureties for respondent in criminal prosecution to make statement of property.—Any person offering to recognize before any judge of the district court or bail commissioner, as surety for the appearance before the superior court of any respondent in a criminal prosecution, whether such respondent be an appellant from the finding of a judge of the district court, or to be ordered to recognize to await the action of the grand jury, or be arrested in vacation on *capias* issued on an indictment pending in such superior court, may be required to file with said judge or bail commissioner a written statement signed and sworn to by said surety, describing all real estate owned by him within the state with sufficient accuracy to identify it, and giving in detail all incumbrances thereon and the value thereof, such valuation to be based on the judgment of said surety. Said certificate shall remain on file with the original papers in said case and a certified copy thereof shall be transmitted by the magistrate taking such bail to the clerk of the court before which said respondent so recognizes for his appearance. (R. S. c. 134, § 14. 1963, c. 402, § 251.)

Effect of amendment.—The 1963 amendment deleted “trial justice” throughout the first sentence and substituted “judge of the district court” for “judge of a municipal

court” at two places therein.

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

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 sen-

tences 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. Arraignment in Vacation.

Sec. 33. Waiver of indictment; petition; information; notification of rights; additional charges; arraignment in vacation. — 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, request arraignment in vacation, and may, by rule, make such other regulations or procedure as justice may require.

Any person charged, by indictment, with an offense not punishable by life imprisonment who is not arraigned at the term at which the indictment is returned and who desires to have a prompt arraignment before the next term of court may file a petition in writing with the clerk of said court requesting prompt arraignment. After the filing of such petition, and after the accused, 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 his right to await arraignment at the next term of court, which waiver shall be recorded. Following such waiver the indictment may then be disposed of as in the case of proceedings by information. (1955, c. 187. 1957, c. 3. 1959, c. 209. 1963, c. 215, §§ 1, 2.)

Effect of amendments. — The 1957 amendment inserted "or the assistant county attorney" in the second, third and sixth paragraphs.

The 1959 amendment, which rewrote this section, substituted the designation "prosecuting officer" in the third and sixth paragraphs for both the county attorney and the assistant.

The 1963 amendment inserted "request arraignment in vacation" in the seventh paragraph and added the present last paragraph.

This section is constitutional. Anderson v. State, 158 Me. 170, 180 A. (2d) 732.

This section is constitutional as to both article I, § 7, of the state constitution and the fourteenth amendment of the federal constitution. 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.

Purpose.—This section is calculated to procure desirable effects for the state in less expensive and briefer, albeit fair and just, criminal process. But the section notably secures for an accused with consciousness of guilt—and oftentimes and, more creditably, remorse—a dependable

method of accelerating his condign punishment without the otherwise unavoidable delay, languishment and misery of awaiting in jail or on bail grand jury consideration and court scheduling. 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.

Section protects rights of liberty.—It is difficult to conceive how the legislature could have expressed a more meticulous consultation of the rights of liberty inhering in man, and a more appreciative recognition of and deference to their dignity and validity, than it has set forth in this section. 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.

It was adapted from the Federal Rules of Criminal Procedure, Rule 7. 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.

And it affords an optional and voluntary procedure to a defendant and not an adversary process or one in invitum. 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.

Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34. State Jurisdiction after Federal Court Disposition.

Oath and Duties of Grand Jurors.

Sec. 7. Disclosures improper.

This section is an effective bar to any disclosure that an indictment is pending. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Arrest must precede disclosure.—By the

terms of this section, a person is not entitled to know of the existence of an indictment until he has been arrested. State v. Hale, 157 Me. 361, 172 A. (2d) 631.

Bail. Arraignment and Trial of Prisoners.

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