

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1957 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES
VOLUME 4

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attorney or the assistant county attorney, 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 guilty shall thereupon impose sentence, and upon entry of any other plea shall continue the matter to the next term at which criminal trials are held.

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

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

If the county attorney or the assistant county attorney desires to charge the accused person with an offense or offenses not punishable by life imprisonment, and not contained in the complaint upon which such accused person has been so bound over, he may, before consenting to proceedings by information, prepare an information or informations setting forth such other offenses and file the same with the clerk of courts and cause the accused to be served with attested copy thereof in order that the accused may have an opportunity to waive indictment upon such other offenses, and an affidavit of such waiver by the accused shall be presented to the court, or any justice of the superior court in vacation, and be recorded.

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

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

Chapter 148.

Proceedings in Court in Criminal Cases.

Section 34. State Jurisdiction after Federal Court Disposition.

Bail, Arraignment and Trial of Prisoners.

Sec. 15. Facts tried, challenges allowed, as in civil cases.—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, except that, in cases of felonies not punishable by imprisonment for life, 8 peremptory challenges shall be allowed each, to the prosecuting officer and the accused; but no member of a grand jury finding an indictment shall sit on the trial thereof, if challenged therefor by the accused. (R. S. c. 135, § 15. 1955, c. 119.)

Effect of amendment.—The 1955 amendment inserted the provision for eight peremptory challenges in cases of felonies not punishable by life imprisonment.

Witnesses.

Sec. 22. Respondent may testify; not compelled to incriminate himself; failure to testify; husband or wife may testify.

Competency of an accused to testify rests upon this section and depends upon compliance with the words "at his own request but not otherwise." State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

This section is applicable in the joint trial of co-indictees. Each may be a wit-

ness for himself, for a co-indictee, or for the State, provided his testimony is given at his own request, but not otherwise. State v. Papalos, 150 Me. 370, 113 A. (2d) 624.

There must be no element of compulsion to make the accused take the witness

stand. He must not be forced to elect whether he will testify. *State v. Papalos*, 150 Me. 370, 113 A. (2d) 624.

Applied in *State v. Dipietrantonio*, 152 Me. 41, 122 A. (2d) 414.

Proceedings after Verdict.

Sec. 29. Sentence imposed upon conviction; proviso; form of recognition; stay of execution of sentence had after commitment.

Cited in *State v. DeBery*, 150 Me. 28, 103 A. (2d) 523.

Sec. 30. Appeal when punishment is imprisonment for life and in certain other criminal cases.

But law court has no jurisdiction of motion in first instance.

In a prosecution for murder, where there was a motion to the law court for new trial, which was not directed to or passed upon by the presiding justice, the motion was not before the law court. *State v. Arse-*

nault, 152 Me. 121, 124 A. (2d) 741.

A motion for a new trial is not, in felony cases, a waiver of the exception taken to the refusal of the presiding justice to direct a verdict. *State v. Lumbert*, 152 Me. 131, 124 A. (2d) 746.

Sec. 32. Error in sentence.

Applied in *Dwyer v. State*, 151 Me. 382, 120 A. (2d) 276.

Sec. 33. Detention at state prison of certain prisoners.—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 safekeeping to await the final decision from the supreme judicial court. The county committing such person to the state prison for safekeeping shall be liable to the state for each such person, a proportional amount of the over-all inmate per capita cost per day based on previous year. (R. S. c. 135, § 33, 1955, c. 247.)

Effect of amendment.—The 1955 amendment rewrote the last sentence.

State Jurisdiction after Federal Court Disposition.

Sec. 34. Court action after federal court has acted.—Whenever any federal court finds that a prisoner in any penal institution in this state has been deprived of any of the rights guaranteed to him by the constitution of the United States before, at or after his trial, so that the judgment or sentence or both are erroneous and said court holds the case on its docket pending corrective action by the proper state official, the attorney general may act as follows. He may file a petition in the superior court of the county where the prisoner was tried and convicted in term time or with any justice of said court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the superior court of conviction or any justice thereof in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of said court and shall set the prisoner down for trial if in term time or bind him over to the next criminal term in said county if in vacation, after setting his bail. If the sentence only is erroneous, the superior court of the county of

conviction in term time or any justice thereof in vacation, on presentation of the attorney general's petition as aforesaid, shall recall the erroneous sentence and order it stricken from the records and shall in term time or in vacation sentence the prisoner anew in accordance with the indictment against said prisoner. (1955, c. 121.)

Chapter 149.

Sentence. Probation Officers. Parole. Pardons. Fugitives from Justice.

Sentences and Imposition.

Sec. 1. No person punished until convicted; costs.—No person shall be punished for an offense until convicted thereof in a court having jurisdiction of the person and case. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution, except before a municipal or trial justice court in which courts he may be sentenced to pay a fine sufficient to cover said costs as provided by section 2-A of chapter 146; and except before trial justice and municipal courts, for violations of the provisions of sections 66, 68, 84 and 89 of chapter 61, and of sections 145 to 152, inclusive, of chapter 100, he shall be sentenced to pay such costs. (R. S. c. 136, § 1. 1957, c. 334, § 14; c. 387, § 19.)

Effect of amendments.—The first 1957 amendment inserted the word "above" in the former third sentence, inserted the exception at the end of the first clause of the present second sentence and inserted the words "except before trial justice and municipal courts" in the last clause of said second sentence. The second 1957 amendment deleted the former second and third sentences.

Sec. 3. Punishment when convict previously sentenced to any state prison.

Prosecutions for taking indecent liberties.—Defendant, who pleaded guilty to an indictment in two counts charging the offense of taking indecent liberties on June 20, 1945, and the conviction and sentence for a prior similar offense in 1936, was properly sentenced for 20 years pur-

suant to provisions of this section, since the provisions of § 11 of this chapter requiring sentence for minimum and maximum terms did not apply to prosecutions under ch. 134, § 6 for taking of indecent liberties (ch. 149, § 12). Carr v. State, 151 Me. 226, 117 A. (2d) 63.

Sentences to State Prison.

Sec. 11. Maximum and minimum terms.—When any person shall be convicted of crime, the punishment for which prescribed by law may be imprisonment in the state prison, the court imposing sentence shall not fix a definite term in said state prison but shall fix maximum and minimum terms. The maximum sentence shall not exceed the longest term fixed by law for the punishment of the offense of which the person sentenced is convicted, and the minimum sentence shall not exceed $\frac{1}{2}$ of the maximum term of imprisonment fixed by statute. (R. S. c. 136, § 11. 1951, c. 92. 1957, c. 253.)

Effect of amendment.—The 1957 amendment deleted the words "and shall not be less than 6 months in any case" formerly appearing at the end of the last sentence.

Prosecutions for taking indecent liberties.—Defendant, who pleaded guilty to an indictment in two counts charging the offense of taking indecent liberties on June 20, 1945, and the conviction and sen-

tence for a prior similar offense in 1936, was properly sentenced for 20 years pursuant to provisions of § 3 of this chapter, since provisions of this section requiring sentence for minimum and maximum terms did not apply to prosecutions under ch. 134, § 6 for taking of indecent liberties (ch. 149, § 12). Carr v. State, 151 Me. 226, 117 A. (2d) 63.