

SENATE....No. 156.

Commonwealth of Massachusetts.

IN SENATE, April 3, 1860.

The Committee on the Judiciary, to whom was committed the House Bill to define the costs in criminal prosecutions, have considered the same, and report the same in a new draft.

Per Order,

G. F. BAILEY, *Chairman.*

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty.

AN ACT

To define the Costs of Criminal Prosecutions.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:—

1 SECT. 1. There shall be taxed as the costs of
2 criminal prosecutions, the following specific fees and
3 none other except such as the court shall deem reason-
4 able, for services not herein specifically provided for,
5 to wit:

6 I. To trial justices:—For receiving a complaint and
7 issuing a warrant, fifty cents; for entering a com-
8 plaint, rendering judgment, and recording the same,
9 examining, allowing and taxing the costs, and filing
10 the papers, seventy-five cents; for a mittimus for the
11 commitment of any person, twenty-five cents; for the
12 trial of an issue, one dollar; for travel in the perform-
13 ance of any official duty, at the rate of fifty cents for

14 every ten miles in going and returning, but only one
15 travel shall be allowed for returning papers to any
16 one term of court; for taking a recognizance, includ-
17 ing principal and surety, twenty cents; for all copies
18 at the rate of fifteen cents a page; for every subpoena
19 for one or more witnesses ten cents.

20 To clerks of courts:—For the entry of an indict-
21 ment, presentment, complaint, or information, taxing
22 costs and filing papers, ninety cents; for entry of an
23 appearance, ten cents; for a continuance, twelve cents;
24 for entering and recording a verdict, default, confession,
25 or other disposition of a case, twenty cents; for taking
26 a recognizance, twenty-five cents; for a warrant,
27 *capias*, *mittimus*, *habeas corpus*, or other special writ,
28 twenty-five cents; for a subpoena for one or more
29 witnesses, ten cents; for recording proceedings and
30 judgments, at the rate of twenty cents a page; for
31 certificate to the county treasurer of the costs in each
32 case, twenty-five cents; for all copies at the rate of
33 fifteen cents a page. And the clerks of courts shall
34 not be required to pay to the county treasurers any
35 part of the fees received by them for making copies or
36 records.

37 III. To witnesses:—In the supreme judicial or
38 superior court, one dollar and twenty-five cents a day;
39 before a police court or trial justice, fifty cents a day;
40 for travel, five cents a mile out and home.

41 IV. To justices and clerks of police courts, the same
42 fees shall be taxed as to trial justices for the like
43 services, the same to be accounted for as provided in
44 the one hundred and sixteenth chapter of the General
45 Statutes.

46 V. To sheriffs, deputy-sheriffs and constables, or
47 other officers:—For service of warrant, habeas corpus,
48 capias or mittimus, eighty cents for each person on
49 whom the same is served; for travel for service of the
50 same, five cents a mile each way, but where more than
51 one process is served upon the same defendant at the
52 same time, no fees shall be allowed for more than one;
53 for conveyance of prisoner when not charged as a
54 disbursement under section two of this act, ten cents
55 a mile one way only, in addition to the travel allowed
56 on the process; for summoning witnesses, ten cents
57 each, and travel five cents a mile each way, computed
58 from the most remote place of service to the place of
59 return; only one travel shall be allowed for the
60 service of any one precept, and if the same precept
61 be served on more than one person, the travel shall
62 be computed to and from the most remote place of
63 service; and where the travel to arrest prisoners, and
64 the travel for summoning witnesses, is in whole or in
65 part the same travel, allowance shall be made for such
66 travel as has been actually performed, and no more;
67 for copies when required by law, the same fee as is
68 allowed to trial justices by the first paragraph of this
69 section; for attending court, before a magistrate, and
70 keeping prisoner, one dollar a day, to be taxed only
71 upon one warrant, if there be two or more against
72 the same defendant at the same time. But none of
73 the foregoing items shall be taxed in any case unless
74 the service for which such fee is taxed is actually
75 performed.

1 SECT. 2. No fees or charges other than those
2 specified in the preceding section shall be allowed or

3 paid to any sheriff, deputy-sheriff, jailer, (except the
4 jailer in the county of Suffolk,) constable, or other
5 officer, for the service of any process in criminal cases,
6 or for the support or custody of any prisoner, or for
7 the conveyance of any prisoner to or from any court,
8 jail, prison, house of correction, reform school, indus-
9 trial school, lunatic hospital, workhouse, almshouse,
10 or other place, unless the expense charged shall have
11 been actually and necessarily incurred.

1 SECT. 3. No sheriff, deputy-sheriff, jailer, constable
2 or other officer, who receives a salary from any county,
3 city or town, for his official services, shall be allowed
4 or paid any fees or extra compensation whatever for
5 any official services in any criminal case rendered or
6 performed while such officer is entitled to salary
7 as aforesaid; but the expenses of such officer, neces-
8 sarily incurred and actually disbursed, in the service
9 of any precept, shall be allowed and paid to him;
10 and all fees taxed on behalf of such officer, if paid
11 by the defendant, shall be paid to the county.

1 SECT. 4. All charges for disbursements other than
2 the specific fees enumerated in this act shall be par-
3 ticularly set forth in the return, and shall be sworn to
4 by the officer making the same.

1 SECT. 5. The provisions of the preceding four
2 sections, so far as they define the fees for the service
3 of processes, shall apply to all original precepts in
4 criminal cases, to all processes issued during the
5 pendency of the prosecution, to venirees and notifying
6 jurors, to all mittimus and to state prison warrants.

1 SECT. 6. Whenever witnesses in criminal trials
2 may be in attendance in two or more cases pending
3 at the same time before the same police court or trial
4 justice, they shall not be allowed full travel and
5 attendance in each case, but the trial justice, or the
6 clerk of the police court, under the direction of the
7 justice thereof, may reduce and apportion the same as
8 may be just and equitable, allowing at least one
9 travel and attendance.

1 SECT. 7. The clerks of police courts, the standing
2 justices of police courts of which there are no clerks
3 and trial justices, shall enter all costs taxed and
4 allowed by them in a record book to be kept by them
5 for that purpose, specifying the case in which the
6 same were allowed, to whom allowed, and the several
7 items of charge specifically; and the receipt of the
8 person entitled thereto shall be entered upon the book
9 when the amount thus allowed is paid.

1 SECT. 8. The county treasurers of the several
2 counties shall not pay over to any justice or clerk of
3 any police court, or to any trial justice, any costs
4 taxed by them and allowed in cases heard before said
5 courts or justices, until the justice or clerk of a police
6 court, or the trial justice, shall have rendered an
7 account in writing of all fines and costs received by
8 him since his last return, and of all fees which have
9 remained in his hands, unclaimed, for the space of
10 three years after the allowance of the same.

1 SECT. 9. No fees or charges shall be allowed or
2 paid to any district-attorney in addition to his salary,

3 as established by law, in any case either civil or crim-
4 inal, in which the Commonwealth is a party, or for
5 any official service, or for any assistance therein, nor
6 to any clerk of courts or other officer whose salary,
7 fees or compensation is established by law, for any
8 services or assistance in criminal cases, excepting the
9 fees established and provided by this act. Any person
10 performing the duties properly appertaining to the of-
11 fice of district-attorney, clerk, or other office, whether
12 acting *pro tempore* or as an assistant to such officer,
13 except permanent assistant clerks, where establish-
14 ed by law, and the permanent assistant district-attorney
15 for the Suffolk district, shall be paid by the officer in
16 whose behalf he thus acts: *provided, however*, that
17 the court may allow for the services of a clerk to aid
18 the district-attorney, who has no assistant, during the
19 sessions of the grand jury, such sum, not exceeding
20 thirty dollars each term as the court may deem
21 reasonable: and *provided, further*, that if in any case
22 it shall appear to the judge of the court in which the
23 services are rendered that there is a public exigency
24 requiring the services to be thus performed, for which
25 no compensation is provided by this act, such allow-
26 ance may be made as said judge shall declare to be
27 reasonable and proper, in a certificate under his own
28 signature, setting forth particularly the nature of the
29 exigency, the amount of services rendered, and the
30 particular amount of compensation to be paid there-
31 for.

1 SECT. 10. So much of chapter one hundred and
2 twenty-seven of the General Statutes, passed on the
3 twenty-eighth of December, in the year one thousand

4 eight hundred and fifty-nine, as requires the payment
5 into the treasury of the Commonwealth of the costs,
6 fines and forfeitures received in criminal prosecutions,
7 and so much of said chapter as requires any reimburse-
8 ments to the several counties from the treasury of the
9 Commonwealth, is hereby repealed; and the costs,
10 fines and forfeitures aforesaid, and unclaimed fees, shall
11 be paid to and retained by the counties: *provided*,
12 *however*, that no indictment or other process shall
13 be invalidated by reason of describing any fines and
14 forfeitures as inuring to the use of the "Common-
15 wealth" instead of the "county," or by reason of any
16 mis-statement as to the appropriation of any fines or
71 forfeitures.

1 SECT. 11. This act shall take effect from and after
2 the thirtieth day of June next.