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Chapter 27.

Department of Institutional Service.

Organization.

Sec. 1. Supervision of institutions; commissioner, appointment, salary, qualification; heads; farm supervisor.—The department of institutional service, as heretofore established, hereinafter in this chapter called the "department," shall have general supervision, management and control of the grounds, buildings and property, officers and employees, and patients and inmates of all of the following state institutions:

The insane hospitals, Pownal state school, the state prison, the reformatories for men and women, the juvenile institutions, the state sanatoriums, the school for the deaf, the military and naval children's home and such other charitable and correctional state institutions as may be created from time to time. The department shall be under the control and supervision of a commissioner of institutional service, hereinafter in this chapter called the "commissioner," who shall be appointed by the governor with the advice and consent of the council; said appointment shall be for 3 years and until his successor is appointed and qualified, or during the pleasure of the governor and council. Any vacancy shall be filled by appointment for a like term. He shall receive such salary as shall be fixed by the governor and council. The commissioner of institutional service shall be a person experienced in institutional administration, either as a superintendent, chief medical officer or business manager, or who has had other satisfactory experience in the direction of work of a comparable nature. Said commissioner shall have the power to appoint institutional heads as shall be necessary for the proper performance of the duties of said department, said appointments to be with the approval of the governor and council. He may appoint such other employees as may be necessary, subject to the provisions of the personnel law. The heads or superintendents of the several said institutions under the department

shall report directly to the said commissioner. Each institutional head shall be experienced in the management of the particular type of institution to which he or she is assigned.

The department shall be charged with the enforcement of all laws concerning the aforesaid institutions except in such cases where specific duties are given elsewhere.

The commissioner shall appoint, with the approval of the commissioner of agriculture, a farm supervisor to cooperate with the several institutional farm managers to coordinate the farm activities of all institutions. The salary and the expenses incurred by the farm supervisor shall be prorated among the accounts set up for the several institutional farms. (R. S. c. 23, § 1. 1949, c. 414.)

Cross references.—See c. 2, § 1, re report of aliens committed to state institutions; c. 16, § 37, re bids for institutional supplies; c. 62, § 6, re plans for new institutions to be submitted to department.

Removal of officers.—It was unquestionably the intention of the legislature to place the power of removal of the public officers mentioned in this section in the governor by the advice and consent of his council. Opinion of the Justices, 72 Me. 542, 556.

Powers and Duties. Rules and Regulations.

Sec. 2. General powers.—The department shall have authority to perform such acts, relating to the care, custody, treatment, relief and improvement of the inmates of the institutions under its control, as are not contrary to law; and to inspect and investigate all jails at least once each year, classify all convicts therein having regard to age, character and offenses, and to order county commissioners to make such alterations in their several jails as may be deemed necessary to classify the persons detained therein, and to require the jailers to keep such records as will facilitate the purposes of this section. (R. S. c. 23, § 2.)

Sec. 3. Industrial and vocational training.—The department shall establish and maintain suitable courses for vocational trades and industrial training in the state school for boys at South Portland and the state reformatory at South Windham, and to install such equipment as may be necessary, and employ such suitable and qualified instructors subject to the approval of the state vocational director as may be necessary to carry out the purposes of this section. The expenses of carrying out the provisions of this section shall be paid from the appropriations for the above-named institutions. (R. S. c. 23, § 3.)

Sec. 4. Improper conduct of officers of institutions.—The department may inquire into any improper conduct imputed to its officers in relation to the concerns of their institutions, and for that purpose may issue subpoenas for witnesses and compel their attendance and the production of papers and writings by punishment for contempt in case of willful failure, neglect or refusal; may examine witnesses under oath administered by the commissioner and may adjudicate on such alleged improper conduct in like cases and with like effect as in cases of arbitration. (R. S. c. 23, § 4.)

Sec. 5. Rules and regulations; fees.—The department shall establish such rules and regulations not inconsistent with law as it may deem expedient for the care and management and the custody and preservation of the property of all state institutions and for the government and discipline of the various patients and inmates of the said institutions; and for the production and distribution of farm, dairy and industrial products of the said institutions.

It shall also establish such rules and regulations for the instruction and employment of the patients and inmates of the various institutions having due regard to their age, sex, strength and disposition for the purpose of securing their improvement and future welfare.

It shall also fix rates and collect fees for the support of patients in state hos-

pitals, sanatoriums and other state institutions and provide for the training of nurses in state hospitals and sanatoriums. (R. S. c. 23, § 5. 1951, c. 266, § 29.)

Sec. 6. Institutional officials may sue for state in certain cases.—Actions, founded on any contract made with the state purchasing agent or any official of the department under the authority granted by the said agent on behalf of any of the state institutions enumerated in section 1, may be brought by the official making the contract or his successor in office; and actions for injuries done or occasioned to the real and personal property of the state and appropriated to the use of any state institution and under the management of any officer thereof may be prosecuted in his name; and no such action shall abate by the retirement, removal or death of such officer, but his successor, upon notice, shall assume its prosecution. (R. S. c. 23, § 6.)

Parole Board.

Sec. 7. Parole board; parole standards; parole officer.—There shall be a parole board in the department of institutional service consisting of the commissioner of institutional service and any 2 persons appointed by the governor. The members appointed by the governor shall be appointed for a 4-year term and shall be paid their expenses and shall receive compensation at the rate of $10 per day for each day actually spent in the work of the board. Such board shall have authority to grant or revoke all paroles in connection with the state penal and correctional institutions and, from time to time, shall make recommendations to the governor in reference to the granting of reprieves, commutations and pardons.

The commissioner may appoint a chief parole officer and parole officers to serve during his pleasure, subject to the approval of the governor and council, who shall perform such duties in connection with the employment, care and supervision of persons paroled from the state penal and correctional institutions as the parole board may determine. Such parole officers are vested with the power and authority to arrest in any county in the state with or without a warrant any person who has violated his parole or who has escaped from any of the institutions under the supervision of the department of institutional service, and to detain and return such person to the institution from which he was paroled or has escaped. The chief parole officer shall be the secretary of the board, direct the activities of the parole officers and be duly authorized to sign documents including warrants and extradition papers, in behalf of the board. (R. S. c. 23, § 7. 1945, c. 237. 1953, c. 404, § 1.)

See c. 149, § 14, re rules and regulations for paroles.

Uniform Act for Out-of-State Parolee Supervision.

Sec. 8. Governor to execute a compact; title.—The governor of this state is authorized and directed to execute a compact on behalf of the state with any of the states of the United States legally joining therein in the form substantially as follows:

A COMPACT

Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to any two or more States to enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for other purposes."

The contracting states solemnly agree:

I. That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, (herein called "sending

state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, (herein called "receiving state"), while on probation or parole, if

A. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

B. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

II. That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

III. That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of the states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state: provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

IV. That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

V. That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

VI. That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

VII. That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

This section may be cited as the "Uniform Act for Out-of-State Parolee Supervision." (R. S. c. 23, § 8.)

Escape, Removal, Examination and Transfer of Inmates.

Sec. 9. Reward for escaped prisoners or inmates.—The department shall take all proper measures for the apprehension and return of any prisoner or inmate of a state penal or correctional institution and may offer a reward of not more than $100 for the apprehension and return of any such prisoner or inmate who has escaped from the control of the department, or who having been released on parole shall have violated the terms of the release. Upon satisfactory proof that the terms of the offer have been complied with, the reward shall be paid by the state. (R. S. c. 23, § 9.)

Sec. 10. Aiding escape from state institutions.—Whoever induces, aids or abets anyone committed to any state institution in escaping therefrom or from the custody of the department of institutions or the department of health and welfare or who knowingly aids, harbors or conceals in any way anyone who has escaped therefrom, or who elopes with or marries a female committed to the custody of the said departments or any state institution without the consent of the department in custody of the person shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment.

It shall be the duty of any sheriff, deputy sheriff, constable, police officer or other person finding any fugitive from any of said institutions at large to apprehend them without a warrant and return said fugitive to the institution from which the escape was made or to any officer or agent of the department. Such officer shall be paid a reasonable compensation by the state for his services. (R. S. c. 23, § 10.)

See c. 10, § 22, sub-§ VIII, re construction of words "insane person."

Sec. 11. Inmates removed for contagious disease.—If a pestilence or contagious disease breaks out among the inmates of any state institution or county jail, the department may cause any of the said inmates to be removed to some suitable place of security where they shall receive all necessary care and medical attention and be returned as soon as may be to the place from whence they were removed, to be there confined according to their sentences if unexpired. (R. S. c. 23, § 11.)

Sec. 12. Physical and psychopathic examination of inmates.—The department may require a physical and psychopathic examination of persons committed to any state penal or correctional institution and shall keep a record thereof. It shall designate competent physicians employed at the Augusta and Bangor state hospitals to conduct such examinations; and the actual expenses of physicians in making such examinations shall be paid from funds available for the use of the institution to which such person was committed. The department may transfer any such person to either of said hospitals for further study or observation of his mental condition if it is deemed advisable. (R. S. c. 23, § 12.)

Sec. 13. Transfer of inmate to other institution; original sentence to continue.—Any person who is committed to a state penal, charitable or correctional institution and is under the control of the department, who becomes insane, or who is found to be insane by the examination authorized by the preceding section, shall be transferred to either of the state hospitals, and any person who is committed to a state penal, correctional or charitable institution and is under the control of the department, who in the opinion of the head thereof is in such condition that he or she is a fit subject for the Pownal state school, shall be transferred to the Pownal state school whenever, in the judgment of the commissioner, the welfare of the patients and inmates, or of either institution, or of the person will be promoted thereby. A copy of the certificate of original

commitment certified by the head of the institution in which said person is confined and a certificate from a regular practicing physician in the state certifying that the person committed is feeble-minded or insane, as the case might be, with an order of transfer signed by the commissioner shall authorize the superintendent of the institution to receive and detain the said person, as above provided for.

Such patient shall be there detained in custody in the same manner as if he or she had been committed thereto originally. The transfers authorized in this and the preceding section shall have no effect on the original sentences which shall continue to run, and if the original sentence has not expired when the patient has been declared ready for discharge or release, the patient shall be returned to the institution to which he or she was originally committed. If prior to the expiration of the original sentence it is the opinion of the head of the institution which has charge of the patient that the patient should remain in the custody of the institution after the expiration of such sentence, the patient may be recommitted to either of the state hospitals upon complaint of the head of the institution which has charge of the patient under the provisions of sections 110 and 111; or to the Pownal state school under the provisions of section 145.

The expense attending such transfers shall be paid from funds available for the use of the institution from which or to which such person is transferred. (R. S. c. 23, § 13. 1951, c. 196, §§ 1, 2.)

See c. 2, § 1, re duty of superintendent to report aliens committed to U. S. immigration inspector; c. 10, § 22, sub-§ VIII, re construction of words "insane person."

Sec. 14. Inmates afflicted with tuberculosis transferred to sanatoriums.—Inmates of the state prison or any other state institution afflicted with tuberculosis may be transferred to state sanatoriums. Whenever any inmate of the state prison or of any other state institution shall become afflicted with tuberculosis so that the welfare of such inmate or the safety of the other inmates of such institution shall require removal therefrom, the department, with the approval of the governor, may cause him or her to be removed to one of the state sanatoriums, to be there kept and treated until he or she may safely be returned to said prison or other institution. In the admission of new patients the officers of such sanatoriums shall give preference to persons transferred under the provisions of this section. (R. S. c. 23, § 14.)

Sec. 15. Transfer of prisoners.—The department may remove prisoners from jails where no arrangements have been made for the labor of convicts, to some work-jail, and when any jail has a larger number of convicts, either in custody or at labor than can be well accommodated, it may remove a portion of them to any other jail where better accommodations can be afforded. Any jail where arrangements have been made or shall be hereafter made for the labor of convicts committed for any special crime or class of crimes, at any special kind of labor, shall be deemed a work-jail. For the removal of convicts, as aforesaid, the department may issue precepts to any officer qualified to serve precepts in criminal cases in his county, to cause such removal, whether such service is performed in whole or in part in one or more counties, and the expense of removal shall be paid by the county in which such convicts were sentenced. The department shall make a report of the condition of all the jails to the governor and council by the 30th day of November annually. (R. S. c. 23, § 15.)

Sec. 16. Cost of transportation; fees when woman attendant required.—The cost of committing and transporting a girl to or from the state school for girls, or a boy to or from the state school for boys, or of a person to or from the Pownal state school, or of a woman to or from the reformatory for women, or of a man to or from the reformatory for men, shall, when not otherwise provided for, be paid from the treasury of the county from which such person is committed as the costs of conveying prisoners to the jails are paid; and

the county commissioners of such county shall examine and allow all such reasonable costs.

In cases where a woman attendant is required or used the fees to be paid shall be the same as those provided for aids in criminal cases and when not otherwise provided for shall be audited by the county commissioners and paid from the county treasury. (R. S. c. 23, § 16.)

See § 13, re transfer to insane hospitals and to Pownal state school; § 14, re inmates of state prison or other state institutions afflicted with tuberculosis may be transferred to sanatorium; c. 89, § 150, re fees.

Board of Visitors.

Sec. 17. Board of visitors.—The governor may appoint a board of 5 visitors, at least two of whom shall be members of the minority party, in connection with each state institution under the department. These visitors shall be appointed for a term of 1 year and shall be eligible for reappointment. No member of the legislature or the governor's council shall serve on any board of visitors. The members of the boards of visitors shall receive no compensation. Each board of visitors shall have the right to inspect the institution to which it is assigned and to make recommendations relative to the management of said institution to the commissioner. (R. S. c. 23, § 17.)

Sale of Out-of-State Prison-Made Goods.

Sec. 18. Policy of state in taking advantage of Hawes-Cooper bill.—No goods, wares or merchandise manufactured, produced or mined, wholly or in part, by convicts or prisoners, except paroled convicts or prisoners, or in any penal or reformatory institutions and transported into the state shall be used, consumed, sold or stored within the state. The purpose and intent of this section is to declare the policy of the state in taking advantage of the so-called Hawes-Cooper bill enacted by federal congress and being entitled, "An Act to Divest Goods, Wares, and Merchandise Manufactured, Produced, or Mined by Convicts or Prisoners of Their Interstate Character in Certain Cases," to be a policy of prohibiting the sale or use within the state, of any goods, wares or merchandise produced in penal institutions outside of the state and transported into this state. (R. S. c. 23, § 18.)

The State Prison.

Sec. 19. Location; prison farms.—The state prison at Thomaston, in the county of Knox, shall continue to be maintained as the prison and penitentiary of the state, in which convicts, lawfully committed thereto, shall be confined, employed and governed as provided by law.

Inmates of the state prison may be transferred at the discretion of the warden to the state prison farm at South Warren, which shall be considered a part of the state prison. The warden may also employ inmates on prison farms conducted on leased land in towns within the county of Knox and detain and house the prisoners in the barracks located on the prison farm at South Warren. Inmates so transferred or so employed shall be deemed to be serving their sentences and subject to the same rules and regulations as inmates confined within the walls of the prison at Thomaston. An inmate who escapes from the prison farm or from land leased by the warden of the state prison for farming, wherever located, shall be guilty of an escape under the provisions of this chapter and shall be punished accordingly. (R. S. c. 23, § 19. 1945, c. 175, § 1.)

Sec. 20. Forms of imprisonment.—Punishment in the state prison by imprisonment shall be by confinement to hard labor and not by solitary imprison-

ment, except as a prison discipline for the government of the convicts. (R. S. c. 23, § 20.)

Cross reference.—See § 43, re punishment.

The power of the court to impose solitary confinement is peremptorily prohibited. The abolition of solitary confinement as a punishment is entire and universal "except as a prison discipline," but prison discipline is to be enforced by the warden within the precincts of the prison and by no one else. State v. Haynes, 74 Me. 161. See § 27, re warden's authority.

Sec. 21. Convicts of United States courts received.—Convicts, sentenced to hard labor in the state prison for life or for any term not less than 1 year by any court of the United States held within the state, shall be received into the prison by the warden thereof, when delivered by the authority of the United States, and there kept in pursuance of their sentences. (R. S. c. 23, § 21.)

Sec. 22. Employment of prisoners on public works.—The department may authorize the employment of able-bodied prisoners, sentenced for any term less than life, in the construction or improvement of highways or on other public works within the state under such arrangements as may be made with the state highway commission or other department of the state having such public works in charge, and said department shall prescribe such rules and conditions as it deems expedient to insure the proper care and treatment of the prisoners while so employed and their safekeeping and return. Prisoners while so employed shall not be required to wear clothing which will materially distinguish them from other workmen. (R. S. c. 23, § 22.)

Sec. 23. Prisoners transported to induction centers.—The warden is authorized to transport prisoners to induction centers whenever necessary to comply with rules and regulations of selective service, and in so doing shall take such measures as the department feels are necessary for the public safety. (1945, c. 175, § 2.)

Sec. 24. Overseers.—Persons having suitable knowledge and skill in the branches of labor and manufactures carried on in the prison shall, when practicable, be employed to superintend such branches as are assigned to them by the warden; and all of them and the other subordinate officers shall perform the services in the management, superintending and guarding of the prison, as prescribed by the rules or directed by the warden. (R. S. c. 23, § 23.)

Sec. 25. Disorderly conduct of prisoners.—The department shall examine into all disorderly conduct among the prisoners, and when it appears to it that a convict is disorderly, refractory or disobedient, it may order any punishment other than corporal which it deems necessary to enforce obedience, not inconsistent with humanity, and authorized by the established rules and regulations of the prison. (R. S. c. 23, § 24.)

Sec. 26. Warden, duties; deputy warden.—The head of the state prison shall be called the warden. He shall have a deputy appointed by the commissioner who, when the office of warden is vacant or the warden is absent from the prison or unable to perform the duties of his office, shall have the powers, perform the duties and be subject to all the obligations and liabilities of the warden. The warden shall not carry on or be concerned in trade or commerce during his continuance in office; he shall reside constantly within the precincts of the prison and have the care, custody and charge thereof, and of the convicts therein, in conformity to their sentences, and of the lands, buildings, machines, tools, stock, provisions and every other kind of property belonging to or within its precincts, under the direction and control of the department. (R. S. c. 23, § 25.)

Cross reference.—See c. 64, re retirement system.

The deputy warden is an officer of the state, as much as the warden. Though

the warden is responsible for his acts, they both derive their authority from the same source. Neither acts as the agent of the other, but both as agents of the state. Hix v. Sumner, 50 Me. 290.

Sec. 27. Control of the prison.—The warden shall inspect and oversee the conduct of the convicts, and cause all the rules of the prison to be strictly and promptly enforced; he shall give the department immediate information of any officer who refuses or neglects to enforce the discipline established, and it shall forthwith remove any officer guilty of such neglect. Said warden may punish any convict for disobedience, disorderly behavior or indolence, as directed by the department or prescribed in the rules, and shall keep a register of all such punishments and the causes for which they are inflicted. (R. S. c. 23, § 26.)

Cross reference.—See c. 2, § 1, re report of aliens committed to state prison.

Warden may not detain or punish convict after sentence has expired. — The warden must have the power to inflict punishments upon prisoners for the prison discipline. The punishment of refractory convicts is a matter within the discretion of the warden, within reasonable limits, but the warden has no authority to detain or punish a convict after his sentence has expired. Gross v. Rice, 71 Me. 241. See notes to § 20.

Sec. 28. Deduction of sentence; board of transfer.—Each convict, except those sentenced to imprisonment for life, whose record of conduct shows that he has faithfully observed all the rules and requirements of the prison, shall be entitled to a deduction of 7 days per month from the minimum term of his sentence, commencing on the first day of his arrival at the prison. The provisions of this section shall apply to the sentences of all convicts now or hereafter confined within the prison, and said provisions shall not be construed to prevent the allowance of good time from maximum sentences or definite sentences other than life sentences.

The warden may from time to time, as he sees fit, recommend to a board of transfer set up within the department of institutional service, and comprising the commissioner of institutional service, the superintendent of the reformatory for men, the superintendent of the Augusta state hospital and the chairman of the state parole board, the transfer of certain first offenders from the state prison to the reformatory for men when in his opinion such transfer is consistent with the best interest of the prisoner and the welfare of the public. Said recommendation for transfer to become effective must have the unanimous approval of the board of transfer and in such event shall take place forthwith. The prisoner so transferred shall serve the sentence imposed upon him by the court within the confines of the reformatory for men, and shall receive during said sentence the same deductions for good time as would have been received at the state prison, and shall be subject to the same parole and release procedures as effective at the state prison. The provisions of this paragraph shall not apply to any person convicted of an offense the only punishment for which prescribed by law is imprisonment for life, nor to any person convicted of an offense under the provisions of sections 10, 11 or 12 of chapter 130 or under the provisions of section 6 of chapter 134. (R. S. c. 23, § 27. 1949, c. 67. 1951, c. 84, § 1.)

Sec. 29. Service of processes; command of the guard; service of writ of replevin; fees.—The warden or his deputy shall serve, execute and return all processes within the exterior walls of the prison yard, and they shall be directed to him or his deputy accordingly; and for the doings of his deputy, both the warden and the deputy shall be answerable. The warden shall have command of all the force for guarding the prison, and of all officers and persons employed under him in overseeing, guarding and governing it. For serving executions and returning processes, like fees shall be taxed as for sheriffs. The warden, on demand of an officer having a writ commanding him to replevy from the warden's possession, any goods or chattels of a private individual, not a

prisoner, shall expose them outside of the prison yard, so that they may be replevied. The officer shall pay the warden a reasonable charge for removal and tax the same in his fees on the writ. (R. S. c. 23, § 28.)

Power of warden and deputy to execute process not restricted as to persons.—The power of the warden and his deputy to execute process is not restricted as to the persons upon whom service can be made. The only limitation is one of locality; and, as in the case of a constable, service may be made upon any person within the prescribed limits. Hix v. Sumner, 50 Me. 290.

But power is limited to exterior walls.—It is within the exterior walls that the warden and his deputy have power to execute legal processes. Outside of these limits, they can neither attach property, make an arrest, nor deliver a summons. Hix v. Sumner, 50 Me. 290.

And no exception where either warden or his deputy is party to suit.—This section gives the warden and his deputy power to serve all processes within the exterior walls of the prison; and no exception is made of suits in which either is a party. Hix v. Sumner, 50 Me. 290.

Sec. 30. Sale of articles from the prison; security.—All sales of articles from the prison, and the letting to hire of such of the convicts as the department deems expedient, and all other contracts on account of the prison, except those made by the state purchasing agent, shall be made with the warden in the manner prescribed by the department. No such contract shall be accepted by the warden, unless the contractor gives satisfactory security for its performance; and no officer of the prison shall be directly or indirectly interested therein. (R. S. c. 23, § 29.)

See c. 16, §§ 35-53, re powers and duties of state purchasing agent; c. 22, § 38, re manufacture of motor vehicle plates at state prison.

Sec. 31. Articles labeled.—All articles and goods manufactured at the prison for sale shall be distinctly labeled or branded with these words, "Manufactured at the Maine State Prison". (R. S. c. 23, § 30.)

Sec. 32. Transportation of prisoners.—When any male person is convicted and sentenced to the state prison from any county, the warden shall be notified immediately and the sheriff of said county, or a sufficient number of his appointed deputies, shall then transport the convict to the state prison. The convict shall be delivered with a duly signed warrant of commitment to the officer in charge of the prison before 4 P. M. on any day. The warden shall then file said warrant with his return thereon in his office, and cause a copy to be filed in the office of the clerk of the court from which it was issued. (R. S. c. 23, § 31. 1953, c. 404, § 2.)

See c. 15, §§ 14-21, re state bureau of identification.

Sec. 33. Convicts enroute temporarily lodged in jails.—When, during the conveyance of any such convict to the state prison in pursuance of his sentence, it is necessary or convenient to lodge him for safekeeping in any jail until the residue of such conveyance can be conveniently performed, the keeper of such jail shall receive and safely keep and provide for him, until called for by the person employed to convey him as aforesaid, into whose custody he shall be delivered; and said jail keeper shall be allowed his reasonable charge and expenses incurred thereby, to be paid from the state treasury. When the warden believes that there are more convicts in the state prison than can be confined there securely, he shall certify the fact to the governor and council, who may authorize him to transfer them, so far as is necessary, to some jail; and the jailer thereof shall receive such compensation from the state treasury as he and the warden agree upon; but when the accommodations of the prison shall be so increased that they can be safely confined therein, the warden shall remove them from such

jail to the state prison. The time during which they were so confined in jail shall be deducted from their sentences. (R. S. c. 23, § 32.)

Sec. 34. Warden may convey real estate.—The warden, under the direction of the commissioner, may sell and convey any real estate to which he acquires title in the adjustment of debts in behalf of the state. (R. S. c. 23, § 33.)

Sec. 35. Warden exempt from arrest; procedure of creditor with an execution.—The warden shall not be arrested on any civil process or execution while in office; but execution upon any judgment against him personally, and not in his official capacity, may be issued against his goods and estate only; and if it is returned unsatisfied, the creditor may file with the governor and council a copy of such execution and return, and serve on the warden a copy of such copy attested by the secretary of state, with a notice under his hand of the day on which such copy was filed; and if the warden does not, within 40 days after such service, pay the creditor his full debt, with reasonable costs for copies and service thereof, he shall be removed; and when he ceases to be warden, alias executions may be issued against his body and property as in other cases. (R. S. c. 23, § 34.)

Sec. 36. Neglect of subordinate officers.—If any subordinate officer is guilty of negligence or unfaithfulness in the discharge of his duties, or of a violation of any of the laws or rules for the government of the prison, the warden, with the approbation of the department, may deduct from his wages a sum not exceeding a month's pay. (R. S. c. 23, § 35.)

Sec. 37. Prison physician; appointment and duties.—The department and warden shall appoint some suitable person physician and surgeon of the prison, who shall visit the same daily, and whenever requested by the warden, to attend and prescribe for sick convicts, and to examine all convicts claiming to be ill and determine their ability to work. He shall see that proper attention is paid to the clothing, regimen and cleanliness of those in the hospital, and advise when illness of any convict requires his removal thereto; and upon such advice and in other cases when he deems it necessary, the warden shall cause any sick convict to be forthwith removed to the hospital, there to receive such care and attention and to be furnished with such medicines and diet, as his situation requires, until the prison physician determines that he may leave it without injury to his health. (R. S. c. 23, § 36.)

Sec. 38. Officers suffering an escape, or allowing convict to go at large.—If any officer, or other person employed in the state prison or its precincts, voluntarily suffers, aids or connives at the escape of a convict therefrom, he shall be punished by imprisonment in the state prison for any term not greater than the whole term for which the convict was sentenced; and if he negligently suffers any convict confined therein to be at large out of the precincts of the prison, or the cell or apartment assigned to him, or to be conversed with, relieved or comforted, contrary to law or the rules of the prison, he shall be punished by a fine of not more than $500. (R. S. c. 23, § 37.)

Sec. 39. Rescue, or aiding prisoners to escape. — Whoever forcibly rescues or attempts to rescue any convict sentenced to the state prison, from the legal custody of any officer or other person, or from the state prison, jail or other place where he is legally confined, or causes to be conveyed to such convict, into such jail, state prison or other place, any tool, instrument, weapon or other aid, with intent to enable him to escape, shall, whether an escape is effected or not, be punished by a fine of not more than $500, or by imprisonment for not more than 20 years. (R. S. c. 23, § 38.)

Sec. 40. Aiding escaped convicts.—Whoever, not standing in the relation of husband or wife, parent or child, to the principal offender, conceals, harbors or in any way aids any convict escaping from the state prison, knowing him to be such; or furnishes such convict with food, clothing, weapon, matches or other article, or information that would aid him to escape recapture, shall be punished by a fine of not more than $500, or by imprisonment for a term of not more than the whole time for which the convict was sentenced. (R. S. c. 23, § 39.)

Sec. 41. Conveying, or attempting secretly to convey, any article to a convict.—If any officer, contractor, teamster or other person delivers, or has in his possession with intent to deliver, to any convict confined in the state prison, or deposits or conceals, in any place in or about the prison or its precincts, or in any wagon or other vehicle going thereto, any article, with intent that any convict therein shall obtain it, without consent or knowledge of the warden or deputy warden, he shall be punished by a fine of not more than $500, and by imprisonment for not more than 6 months, or by imprisonment for not more than 2 years. (R. S. c. 23, § 40.)

Sec. 42. Convict assaulting officers; escape; prosecution. — If a convict, sentenced to the state prison for a limited term of years, assaults any officer or other person employed in the government thereof, or breaks or escapes therefrom, or forcibly attempts to do so, he may, at the discretion of the court, be punished by confinement to hard labor for any term of years, to commence after the completion of his former sentence. The warden shall certify the fact of a violation of the foregoing provisions to the county attorney for the county of Knox, who shall prosecute such convict therefor. (R. S. c. 23, § 41.)

Quoted in part in State v. Haynes, 74 Me. 161.

Sec. 43. Punishment. — Solitary confinement, as a punishment for the violation of the rules of the prison, shall be inflicted upon the convict in a cell and he shall be fed on bread and water only, unless the physician certifies to the warden that the health of such convict requires other diet. (R. S. c. 23, § 42.)

See § 20, re forms of punishment.

Sec. 44. If resisted, officers shall use force.—If a convict sentenced to the state prison resists the authority of any officer or refuses to obey his lawful commands, the officer shall immediately enforce obedience by the use of weapons or other effectual means; and if, in so doing, a convict thus resisting is wounded or killed by the officer and his assistants, they shall be justified. (R. S. c. 23, § 43.)

Sec. 45. Warden to keep arms and ammunition, etc. — The warden shall constantly keep on hand a suitable and sufficient supply of arms and ammunition, and may require all officers and other citizens to aid him in suppressing an insurrection among the convicts in prison, and in preventing their escape or rescue therefrom, or from any other legal custody or confinement; and if, in so doing, or in arresting any convict who has escaped, they wound or kill such convict or those aiding him, they shall be justified. (R. S. c. 23, § 44.)

Sec. 46. Application of §§ 42-45. — The 4 preceding sections apply to convicts and officers in the county jails having workshops attached thereto, and in any county farm that may be established for the reformation of inebriates. (R. S. c. 23, § 45.)

See c. 89, § 21, et seq., re county jails.

Sec. 47. When term commences.—No convict shall be discharged from

the state prison until he has served the full term for which he was sentenced, including the day on which he was received into it, unless he is pardoned or otherwise released by legal authority. (R. S. c. 23, § 46.)

History of section.—See Gross v. Rice, 71 Me. 241.

Sec. 48. Convict's property taken care of by warden.—The warden shall receive and take care of any property that a convict has with him at the time of his entering the prison; when it is convenient, place the same at interest for his benefit; keep an account thereof, and pay the same to him on his discharge, or, in case of his death, to his representatives unless otherwise legally disposed of. (R. S. c. 23, § 47.)

Sec. 49. Convicts, on discharge.—On the discharge of any convict who has conducted himself well during his imprisonment, the warden may furnish him a sum not exceeding $10, and, if he requests it, a certificate of such good conduct; and shall take care that every convict on his discharge is provided with decent clothing. The warden shall also furnish transportation to the place where he was convicted, or to his home if within the state; or if he has secured employment within the state, to that place. If he lived out of the state or if he has secured employment out of the state, he shall receive transportation to the state border nearest his home or nearest the place where he has secured employment. (R. S. c. 23, § 48.)

Sec. 50. Alterations by warden.—The warden, on the approval of the department and with the consent of the governor and council, may erect such additional buildings or make such alterations within the prison or its precincts as he deems necessary and proper. (R. S. c. 23, § 49.)

Sec. 51. Chaplain of prison; duties.—The department shall appoint suitable persons as chaplains, who shall, in accordance with the rules of the prison, conduct religious services in the chapel every Sunday, visit the sick, labor diligently and faithfully for the mental, moral and religious improvement of the convicts, and aid them when practicable in obtaining employment after their discharge. With the assent of the department, a Sunday school may be established, and persons from without, of proper character, may be admitted to assist in it. (R. S. c. 23, § 50.)

Reformatory for Women.

Sec. 52. Reformatory for women.—The state shall maintain a reformatory in which all women over the age of 16 years and under the age of 40 years who have been convicted of or have pleaded guilty to crime in the courts of the state or of the United States, and who have been duly sentenced and removed thereto, shall be imprisoned in accordance with the sentences or orders of said courts and the rules and regulations of said reformatory. The head of the reformatory shall be a woman and be called the superintendent. (R. S. c. 23, § 51.)

Cross reference.—See § 94, re incorrigible girls over 16.

Purpose of section. — The legislation establishing the reformatory for women, and other corrective institutions, is designed to accomplish the reform of persons committed thereto rather than their punishment. Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 53. Women prisoners.—The department shall maintain quarters at the reformatory for women for the incarceration of all women sentenced to the state prison.

All women sentenced to the state prison shall be transmitted directly from the place of sentence to said reformatory and serve their sentences at said reforma-

tory and shall be subject to all rules governing persons sentenced to the state prison. (R. S. c. 23, § 52.)

Sec. 54. Commitment; length of sentence; woman attendant in serving mittimus.—When a woman over the age of 16 years and under the age of 40 years is convicted before any court or trial justice having jurisdiction of the offense, of an offense punishable by imprisonment in the state prison, or in the county jail, or in any house of correction, such court or justice may order her commitment to the reformatory for women, or sentence her to the punishment provided by law for the same offense.

When a woman is sentenced to the reformatory for women the court or trial justice imposing the sentence shall not fix the term of such commitment unless it be for a term of more than 3 years; and the duration of such commitment, including the time spent on parole, shall not exceed 3 years, except where the maximum term specified by law for the crime for which the offender was sentenced shall exceed that period, in which event such maximum term shall be the limit of detention under the provisions of this section, and in such cases it shall be the duty of the trial court to specify the maximum term for which the offender may be held under such commitment. Upon commitment of such woman, if the officer to whom the mittimus or order of commitment is addressed is not a woman, the judge or trial justice shall in all cases when feasible designate a woman to be an attendant to accompany her to said reformatory. (R. S. c. 23, § 53.)

Court must determine which sentence is better for common welfare.—The burden is placed upon the courts to determine on the evidence in each case whether the purely punitive sentence for a specified period, or the indefinite sentence with a reformative purpose even though invoking longer restraint, is better for the common welfare. Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

History of section.—See Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 55. Sentence not void because for a definite period. — If, through oversight or otherwise, any person is sentenced to imprisonment in the said reformatory for women for a definite period of time, said sentence shall not for that reason be void; but the person so sentenced shall be entitled to the benefit, and subject to the liabilities of sections 52 to 65, inclusive, in the same manner and to the same extent as if the sentence had been in the terms required by section 54. In such case the superintendent shall deliver to such offender a copy of said sections. (R. S. c. 23, § 54.)

Sec. 56. Record of commitments kept by superintendent.—The judge or magistrate committing a woman to the reformatory shall cause the superintendent to be immediately notified of such commitment, and shall cause a record to be kept of the name, age, birthplace, occupation, previous commitments, if any, and for what offense, the last place of residence of such woman and the particulars of the offense for which she is committed. A copy of such record shall be transmitted with the warrant of commitment to the superintendent of such institution, who shall cause the facts stated therein and such other facts as may be directed by the department to be recorded in such form as the department shall determine. (R. S. c. 23, § 55.)

Sec. 57. Age of woman committed determined and stated in mittimus; effect. — Such judge or magistrate shall, before committing any such woman, inquire into and determine the age of such woman at the time of her commitment, and her age as so determined shall be stated in the mittimus. The statement of the age of such woman in such mittimus shall be conclusive evidence as to such age in any action to recover damages for her detention or imprisonment under such mittimus, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment. (R. S. c. 23, § 56.)

Sec. 58. Care of children of women committed.—If any woman committed to said reformatory is, at the time of her commitment, the mother of a nursing child in her care and under 1 year of age, or is pregnant with child which shall be born after such commitment, such woman may retain such child in said reformatory until it shall be 2 years of age, when it must be removed therefrom. The department may cause such child to be placed in any asylum for children in this state and pay for the care and maintenance of such child therein until the mother of such child shall have been discharged, or may commit such child to the care and custody of some relative or proper person willing to assume such care, or such child may be committed to the custody of the department of health and welfare under the provisions of section 249 of chapter 25. If such woman, at the time of such commitment, shall be the mother of and have under her exclusive care, a child more than 1 year of age, which might be otherwise left without proper care or guardianship, the magistrate committing such woman shall cause such child to be committed to such asylum as may be provided by law for such purposes, or to the care and custody of some relative or proper person willing to assume such care or to the custody of the department of health and welfare. Any commitment of a child under the provisions of this section to the custody of any asylum for children or to any relative or other person, or to the department of health and welfare shall be subject to the provisions of sections 250, 251 and 252 of chapter 25. (R. S. c. 23, § 57.)

Sec. 59. Liberty permits; revocation; return for unexpired term.—When it appears to the parole board that a woman who has been sentenced to the reformatory for women has reformed, it may issue to her a permit to be at liberty, provided that some suitable employment or situation has been secured in advance for such woman, upon such other conditions as it shall prescribe, during the remainder of the term for which she might otherwise be held in said reformatory, and it may revoke said permit at any time before its expiration; but no such permit shall be issued to any woman who has been sentenced for more than 5 years. If a permit so issued be revoked, or if a woman escapes from the reformatory, the said board may cause her to be rearrested and returned thereto for the unexpired portion of her term, dating from the time of her escape or the revocation of her permit. Any inmate ordered returned to the reformatory may, on the order of the superintendent or other officer of the institution, be arrested and returned to the reformatory or to any officer or agent thereof, by any sheriff, constable, police officer, state agent for the protection of children or other person, and may also be arrested and returned by any officer or agent of the reformatory. (R. S. c. 23, § 58.)

Cited in Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 60. Discharge of certain paroled women.—When an inmate of the reformatory for women whose term was not prescribed by the court has been paroled and in the opinion of the parole board such inmate is no longer in need of supervision, said board may authorize the superintendent to discharge such inmate from her sentence. (R. S. c. 23, § 59. 1953, c. 404, § 3.)

Cited in Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 61. Escape of inmate. — Any woman lawfully committed to said reformatory who escapes therefrom, or who violates the condition of any permit by which she may have been allowed to be at liberty under the provisions of the 2 preceding sections, shall be punished by additional imprisonment in said reformatory for not more than 11 months for each such offense. Prosecution under the provisions of this section may be instituted in any county in which said woman

may be arrested or in the county of Somerset, but in such case the costs and expense of trial shall be paid by the county from which said woman was originally committed, and payment enforced as provided in the following section. (R. S. c. 23, § 60.)

Sec. 62. Expense of trial for crime committed while an inmate.— Whenever any inmate of the reformatory for women, not having been sentenced thereto by the court of the county wherein such reformatory for women is situated, shall be convicted in such county of any misdemeanor or felony committed while an inmate of the said reformatory, the costs and expenses of trying such convicted inmate and of her maintenance after conviction and sentence, if to the county jail of such county, shall be paid by the county from which the said convicted inmate was originally sentenced; the costs and expenses of the trial of such convicted inmate shall, in the first instance, be paid by the county wherein such reformatory for women is situated, and the commissioners thereof may thereupon draw their warrant upon the treasurer of the county, from which said convicted inmate was sentenced to the reformatory, for the amount so paid by the said county wherein such reformatory is situated for said costs and expenses, and the treasurer upon whom said warrant may be drawn shall pay it forthwith. (R. S. c. 23, § 61.)

Sec. 63. Governor may grant pardon.—Nothing contained in this chapter shall be construed to interfere with the power of the governor with the advice and consent of the council to grant a pardon or commutation to any person committed to the reformatory for women. (R. S. c. 23, § 62.)

See Me. Const., Art. 5, Part First, § 11, re power of governor to pardon.

Sec. 64. Incorrigible inmates; trial and sentence; discharge from reformatory. — Any person committed to the reformatory for women whose presence therein may be seriously detrimental to the well-being of the institution or who willfully and persistently refuses to obey the rules and regulations of said institution, may be deemed and declared an incorrigible. When complaint is made to any judge of any municipal court having jurisdiction, he may upon hearing bind over any person so accused to the term of the superior court next to be holden within such county, and if indictment is returned therefor, then, upon conviction, said incorrigible may be sentenced to the state prison for not less than 1 year, nor more than 5 years. Upon conviction as such incorrigible and sentence as above provided, said person shall be discharged from said reformatory and be relieved from serving the balance of sentence in said reformatory. (R. S. c. 23, § 63.)

Sec. 65. Transfer to reformatory from other penal institutions.— Upon petition of the department asking for the transfer to the reformatory for women of any woman serving sentence in any county jail or in any house of correction, presented to the court or trial justice having imposed sentence, the judge or magistrate shall set a time for hearing, giving at least 48 hours' notice to said woman, and shall notify the custodian of said woman to bring said woman before him for hearing. After hearing, said judge or said magistrate may order said woman transferred to the reformatory for women to serve the remainder of the term of sentence under which said woman was committed to the county jail or house of correction. The provisions of this chapter in regard to original commitments to the reformatory shall apply to any transfer under the provisions of this section, but in no case shall the time of sentence to be served in the reformatory exceed the remaining time of the sentence originally imposed. A woman transferred under the provisions of this section shall be subject to the provisions

of this chapter relating to the reformatory and to the same rules and regulations as inmates originally committed to the reformatory. (R. S. c. 23, § 64.)

Reformatory for Men.

Sec. 66. Reformatory for men.—The state shall maintain a reformatory in which all males over the age of 16 years and under the age of 36 years who have been convicted of or have pleaded guilty to crime in the courts of this state or of the United States, and who have been duly sentenced and removed thereto, shall be imprisoned and detained in accordance with the sentences or orders of said courts and the rules and regulations of said reformatory. The provisions for the safekeeping or employment of such inmates shall be made for the purpose of teaching such inmates a useful trade or profession, and improving their mental and moral condition.

The head of the institution shall be called the superintendent. (R. S. c. 23, § 65.)

Cross references.—See § 52, re purpose of establishment; § 87, re incorrigible boys over 16.

Cited in Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 67. Commitments for less than 3 years; to be of indeterminate duration.—When a male over the age of 16 years and under the age of 36 years is convicted by any court or trial justice having jurisdiction of the offense, of an offense punishable by imprisonment in the state prison, or in any county jail or in any house of correction, such court or trial justice may order his commitment to the reformatory for men, or sentence him to any other punishment provided by law for the same offense; provided, however, that any such person known by the court or trial justice having jurisdiction of the offense to have been previously committed to a state prison shall not be committed to said reformatory. When a male is ordered committed to the reformatory for men, the court or trial justice ordering the commitment shall not prescribe the limit thereof, but no male committed to the reformatory as aforesaid shall be held for more than 3 years.

If through oversight, or otherwise, any person be committed to imprisonment in the said reformatory for men for a definite period of time, said commitment for that reason shall not be void; but the person so committed shall be entitled to the benefit, and subject to the provisions of this section, in the same manner and to the same extent as if the commitment had been in the terms required by this section. In such case the superintendent of the reformatory shall deliver to such offender a copy of sections 66 to 75, inclusive. (R. S. c. 23, § 66. 1951, c. 84, § 2.)

Court must determine which sentence is better for common welfare.—The burden is placed upon the courts to determine on the evidence in each case whether the purely punitive sentence for a specified period, or the indefinite sentence with a reformative purpose even though invoking longer restraint, is better for the common welfare. Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Considerations in determining sentence.—In many instances there should be a sentence to the reformatory for men, because of age limit, previous good character, mitigating circumstances, probable reformation, or other legal considerations. Jenness v. State, 144 Me. 40, 64 A. (2d) 184.

History of section.—See Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 68. Court to notify superintendent of commitments and to furnish copy of record with warrant.—The judge or trial justice making a commitment pursuant to the provisions of section 67 shall cause the superintendent of the reformatory to be notified immediately of such commitment and shall cause a record to be kept of the name, age, birthplace, occupation, previous

commitments, if any, and for what offense, the last residence of such person so committed and the particulars of the offense for which he is committed. A copy of such record shall be transmitted with the warrant of commitment to the superintendent of such reformatory, who shall cause the facts stated therein and such other facts as may be directed by the department to be recorded in such form as the department may direct. (R. S. c. 23, § 67.)

Sec. 69. Court to determine age of person committed.—Such judge or trial justice shall, before committing any such person, inquire into and determine the age of such person at the time of commitment, and his age so determined, shall be stated in the mittimus. The statement as to the age of said person so committed shall be conclusive evidence as to such age in any action to recover damages for his detention or imprisonment under such mittimus, and shall be presumptive evidence thereof in any other inquiry, action or proceeding relating to such detention or imprisonment. (R. S. c. 23, § 68.)

Sec. 70. Classification, conduct records and parole eligibility.—The superintendent of the reformatory shall classify each person committed thereto and keep a monthly record of his behavior and his progress in industry. Whenever the record of any such inmate is satisfactory to the superintendent, he may, in his discretion, recommend any inmate for a hearing before the parole board, but no inmate shall be paroled until he shall have served 6 months if convicted of a misdemeanor or 1 year if convicted of a felony, except that an allowance of 7 days for each month served from date of commitment may be granted by the superintendent whenever in his opinion the conduct of the person so committed justifies such consideration. (R. S. c. 23, § 69.)

Sec. 71. Conditions of parole, violation of terms of parole, final discharge.—When a person committed to the reformatory for men has been recommended for a hearing before the parole board by the superintendent, the parole board may, in its discretion, after proper hearing, issue a permit for such person to be at liberty and may so release such person providing some suitable employment or situation has been secured for him in advance, and upon such other conditions as the parole board may prescribe. Any person to whom such a permit has been issued shall be under the custody and control of the parole board during the remainder of the term that he otherwise might have been held at the reformatory for men, but if it shall appear to the parole board that such person will continue to live an orderly life, said board may authorize the superintendent to discharge such person from custody and to deliver to him a written certificate to that effect. Any permit so issued by the parole board may be revoked by said board for any reason satisfactory to said board. Whenever such permit is revoked, such person shall be rearrested and returned to the reformatory, by order of the parole board, where he shall be held for the unexpired portion of the term for which he might have been held under his original commitment, and such unexpired portion shall date from the time of revocation of said permit, provided, however, that such person may again be paroled in the discretion of the parole board in the manner herein set forth. The order to return by the parole board upon violation of parole conditions shall be sufficient warrant for any officer of the reformatory, sheriff, constable, police officer or parole officer to so rearrest and return such person to actual custody within the reformatory. (R. S. c. 23, § 70. 1953, c. 404, § 4.)

Sec. 72. Parolees; record forwarded to state police.—Whenever any person, who has been convicted of an offense under the provisions of sections 10, 11 or 12 of chapter 130, or under the provisions of section 6 of chapter 134, is released upon parole, or otherwise discharged according to law, the superintend-

ent shall make and forward to the state police a copy of the record of said inmate together with such other information as he may deem important for a full comprehension of the case. (1949, c. 110.)

Sec. 73. Escapes; apprehension; assaults.—When a person sentenced to the state reformatory for men escapes therefrom, the superintendent shall take all proper measures for his apprehension.

Whenever any inmate of said reformatory escapes therefrom, or forcibly attempts to do so or assaults any officer or other person in the government thereof, the superintendent may certify that fact on the original mittimus, with recommendation that said person be transferred to the state prison and present it to the commissioner for his approval. Upon approval of said recommendation by the commissioner, said inmate shall be transferred from the reformatory to the state prison, where he shall serve the remainder of the term for which he might otherwise be held at said reformatory, or at the discretion of the court he may be punished by imprisonment in the state prison for any term of years. Prosecution under the provisions of this section may be instituted in any county in which said person may be arrested or in the county of Cumberland but in such cases the cost and expenses of trial shall be paid by the county from which said person was originally committed, and payment enforced as provided in the following paragraph.

Whenever any inmate of the reformatory, not having been sentenced thereto by a court of the county wherein such reformatory is situated and established, shall be convicted in such county of any misdemeanor or felony committed while an inmate of said reformatory, or of an escape therefrom, the cost and expense of trying such convicted inmate, and of his maintenance after conviction and sentence, if to the county jail of such county, shall be paid by the county from which the said convicted inmate was sentenced, and the costs and expenses of such trial shall, in the first instance, be paid by the county wherein such reformatory shall be established, whose commissioners are thereupon authorized to draw their warrant upon the treasurer of the county, from which said convicted inmate was sentenced to said reformatory, for the amount paid as aforesaid by said county wherein said reformatory is established, for said costs and expenses which warrant it shall be the duty of the treasurer upon whom it may be drawn to pay forthwith. (R. S. c. 23, § 71.)

Sec. 74. Governor may grant pardon.—Nothing contained in this chapter shall be construed to interfere with the power of the governor with the advice and consent of the council to grant a pardon or commutation to any person committed to the reformatory for men. (R. S. c. 23, § 72.)

Sec. 75. Incorrigible inmates; proceedings for transfer to state prison.—Any person committed to the reformatory for men whose presence therein may be seriously detrimental to the well-being of the institution or who willfully and persistently refuses to obey the rules and regulations of said institution, may be deemed and declared incorrigible by the superintendent of said reformatory who may certify that fact upon the original mittimus with recommendation that said person be transferred to the state prison and present said recommendation to a board of transfer set up within the department of institutional service. This board shall consist of the commissioner, the warden of the state prison and the superintendent of the Augusta state hospital. Such recommendation to become effective must have the unanimous approval of the board to transfer and in such event shall take place forthwith. Any person so transferred shall serve the remainder of the term he might otherwise have been held at the reformatory or upon complaint being made to any judge of any municipal court in the county, he may, upon hearing, bind over any person so accused to the term

of the superior court next to be holden within such county, and if indictment is returned therefor, then upon conviction said incorrigible may be sentenced to the state prison for not less than 1 year nor more than 5 years. Upon conviction of such person committed to the reformatory for men as such incorrigible and sentence as above provided, said person shall be discharged from said reformatory for men and be relieved from serving the balance of his sentence in said reformatory. The provisions of this section, as they relate to the board of transfer and its powers, shall apply only to those persons committed to the reformatory for men for a felony. (R. S. c. 23, § 73. 1951, c. 100.)

Juvenile Institutions.

Sec. 76. Juvenile offenders vs. state and federal law. — The state shall maintain the state school for boys, established in the city of South Portland, for the instruction, employment and reform of juvenile offenders, and the state school for girls, established in Hallowell, for the education, employment and reform of girls, the head of each of which shall be called the superintendent. The department may contract with the attorney general of the United States for the confinement and support in said schools of juvenile offenders against the laws of the United States in accordance with the provisions of the United States Code, Title 18, sections 706 and 707. (R. S. c. 23, § 74.)

The superintendents of the juvenile institutions are public officers whose powers and duties are prescribed by statute. In the absence of all evidence to the contrary, it will be presumed that their acts were intended to be within the scope of their legal powers and duties. Being public officers, all persons are presumed to know the extent of their powers, and to confine the contracts made with them within the legitimate scope of the superintendents' powers. Foxton v. Kucking, 55 Me. 346.

State School for Boys.

Sec. 77. Commitments; alternative punishment; deaf and dumb, non compos or insane not sent; records.—When a boy between the ages of 9 and 17 years is convicted before any court having jurisdiction of an offense punishable by imprisonment in the state prison, not for life, or in the county jail or in the house of correction, such court may order his commitment to the state school for boys or sentence him to the punishment provided by law for the same offense. If to such school, the commitment shall be conditioned that if such boy is not received or kept there for the full term of his minority, unless sooner discharged by the department as provided in section 80, or released on probation as provided in section 82, he shall then suffer the punishment provided by law, as aforesaid, as ordered by the court; but no boy shall be committed to said school who is deaf and dumb, non compos or insane. The record in the event of conviction in all such cases shall be that the accused was convicted of juvenile delinquency, and the court shall have power at the hearing of any such case to exclude the general public other than persons having a direct interest in the case. The records of any such case by order of the court may be withheld from indiscriminate public inspection, but such records shall be open to inspection by the parent or parents of such child or lawful guardian or attorney of the child involved. (R. S. c. 23, § 75. 1947, c. 211. 1949, c. 349, § 46.)

Cross reference.—See notes to § 52.

Court must determine which sentence is better for common welfare.—The burden is placed upon the courts to determine on the evidence in each case whether the purely punitive sentence for a specified period, or the indefinite sentence with a reformative purpose even though invoking longer restraint, is better for the common welfare. Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 78. Age, residence and day when minority expires certified in mittimus.—When any boy is ordered to be committed to the state school for boys, the court by whom such commitment is ordered shall certify in the mittimus the city or town in which such boy resides at the time of his commitment, the age of the boy and the date on which his term of minority will expire. The finding of the court regarding the age and residence of the boy shall be deemed a decision of a question of fact, and his certificate thereof shall be conclusive evidence of the age and residence of the boy and of the day on which his term of minority will expire. (R. S. c. 23, § 76. 1949, c. 349, § 47.)

Sec. 79. Instruction and discipline.—Every boy committed to said school shall there be kept, disciplined, instructed, employed and governed, under the direction of the department until the term of his commitment expires, or he is discharged as reformed, bound out by said department according to its by-laws, or remanded to some penal institution under the sentence of the court, or transferred to the reformatory for men as incorrigible, upon information to the department as hereinafter provided. (R. S. c. 23, § 77.)

Sec. 80. Proceedings, when department or superintendent does not receive a boy.—When a boy is ordered to be committed to said school and the department deems it inexpedient to receive him, or his continuance in the school is deemed injurious to its management and discipline, it shall certify the same upon the mittimus by which he is held, and the mittimus and boy shall be delivered to any proper officer, who shall forthwith commit said boy to the jail, house of correction or state prison, or if he has attained the age of 16 years, to the state reformatory for men according to his sentence. The department may discharge any boy as reformed; and may authorize the superintendent, under such rules as it prescribes, to refuse to receive boys ordered to be committed to said school, and his certificate thereof shall be as effectual as its own. (R. S. c. 23, § 78.)

Sec. 81. Term of commitment; record and effect of discharge. — All commitments of boys shall be during their minority unless sooner discharged by order of the department, as before provided; and when a boy is discharged from the school at the expiration of his term, whether he be then in the institution or lawfully out on probation, or when discharged as reformed, an appropriate record of such discharge shall be made by the superintendent upon the register of the school required to be kept by provisions of section 84. Such discharge shall be a full and complete release from all penalties and disabilities created by his sentence and commitment, and the record of the proceedings under which such boy was so committed shall not be deemed to be, nor shall it be subsequently used as, a criminal record against him. Each boy discharged from the institution shall receive an appropriate written discharge, signed by the superintendent. Such discharge, or a copy, duly certified by the superintendent, of the record of discharge upon the register of the school, shall be receivable in evidence and conclusive of the facts therein stated. (R. S. c. 23, § 79.)

Effect of inmate's reaching his majority. —The control of the superintendent over the person or property of one under official commitment absolutely ceases upon his reaching his majority, and nothing else is necessary to reinstate him in all of his civil rights. His person and property are as free from all legal restraint and control by the superintendent as before commitment; and unless he has a legally appointed guardian, his rights and powers over his property are as full and complete as those of any citizen of the state. Foxton v. Kucking, 55 Me. 346.

Sec. 82. Boys committed on probation; return to school.—The department may place on parole and on such terms as it deems expedient, to any suitable inhabitant of the state or to the department of health and welfare, any

boy in the custody of the state school for boys, for a term within the period of his commitment, such parole to be conditioned on his good behavior and obedience to the laws of the state. Such boy shall, during the term for which he was originally committed to the state school for boys, be also subject to the care and control of the department, and on its being satisfied at any time that the welfare of the boy will be promoted by his return to the school, it may order his return. On his return to the school, such boy shall there be held and detained under the original mittimus. The department may delegate to the parole board or to the superintendent under such rules as it prescribes the powers herein granted to the department to place any boy on parole to any suitable inhabitant of the state or to the department of health and welfare, and to return to the school any boy so paroled when satisfied that the welfare of the boy will be promoted by his return. Any boy ordered returned to the school may, on the order of the parole board, superintendent or other officer of the institution, be arrested and returned to the school by any sheriff, constable or police officer and may also be arrested and returned by any parole officer or agent of the school. Whenever such boy is discharged to the custody of the department of health and welfare, the expense of his maintenance and education shall be borne in accordance with the provisions of section 251 of chapter 25 and the department shall be invested with the same powers and duties as if such boy had been committed under the provisions of section 249 of said chapter. (R. S. c. 23, § 80. 1945, c. 378, § 21. 1953, c. 404, § 5.)

Sec. 83. Instruction; rules and punishments. — The department shall establish and maintain a mechanical school, and cause the boys under its charge to be instructed in mechanical trades and in the branches of useful knowledge, adapted to their age and capacity; also in agriculture and horticulture, according to their age, strength, disposition and capacity; and otherwise, as will best secure their reformation, amendment and future benefit. In binding out the inmates, the department shall have scrupulous regard to the character of those to whom they are bound. The department shall specify the punishments that may be inflicted upon boys in the school, and any officer, agent or servant who inflicts punishment not so authorized shall be discharged. (R. S. c. 23, § 81.)

Sec. 84. Superintendent; record of punishment, open to public inspection; register.—The superintendent shall be a constant resident at the institution; and discipline, govern, instruct, employ and use his best endeavors to reform the inmates, so as to preserve their health, and secure, so far as possible, moral and industrious habits and regular improvement in their studies, trades and various employments. He shall see that no punishment is inflicted in violation of the rules of the department, and shall immediately enter in a book kept for the purpose, a particular record of all corporal punishment inflicted, stating the offense, the punishment and by whom administered, which record shall be open to public inspection. He shall keep a register containing the name and age of each boy, and the circumstances connected with his early life and add such facts as come to his knowledge relating to his subsequent history while at the institution and after he left it. (R. S. c. 23, § 82.)

Sec. 85. Homeless reformed boys returned.—Any boy deemed by the department to be reformed who has no suitable home to which he can be sent and for whom, in consequence of physical infirmity or other reason, no suitable home can be found by the department, may be discharged by said department and returned to the selectmen of the town or the overseers of the poor of the city where such boy resided at the time of his commitment. (R. S. c. 23, § 83.)

Sec. 86. Solitary confinement; denial of food prohibited.—The inmates shall, so far as practicable, take daily outdoor exercise and be employed in

some outdoor labor. Each shall be provided with his own clothing and be taught to care for it. Solitary confinement is not allowed except for grave offenses specified in the rules of the department and the apartment where it is inflicted shall be suitably warmed, lighted and provided with a bed and proper appliances for cleanliness. All the boys shall receive the same quality of food and in quantities to satisfy their appetites. They shall not be punished by a denial or short allowance of food. (R. S. c. 23, § 84.)

Sec. 87. Incorrigible inmate over 16 years of age transferred to reformatory for men.—If, in the opinion of the department, any boy, under the guardianship of the state school for boys or who may hereafter be committed thereto, who has attained the age of 16 years, is incorrigible, the superintendent may certify the same on the original mittimus and have it signed by the commissioner or some official duly authorized by him; whereupon said boy shall be transferred from said state school for boys to the reformatory for men, together with the original mittimus and certificate thereon. It shall be the duty of the officers of the reformatory for men to receive any boy so transferred and the remainder of the original commitment shall be executed at the reformatory for men. (R. S. c. 23, § 85.)

Stated in Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

State School for Girls.

Sec. 88. Duties of department; girls committed entrusted to others; education.—The department shall have all the powers as to the person, property, earnings and education of every girl committed to the state school for girls during the term of her commitment, which a guardian has as to his ward, and all powers which parents have over their children. At the discretion of said department, any such girl, during her commitment, may be kept at said school, or entrusted to the care of any suitable person and may be required to work for such person, for a period not exceeding the term of her commitment, on such conditions as said department may deem reasonable and proper; or she may be entrusted to the custody of the department of health and welfare, in which case, the expense of her maintenance and education shall be borne in accordance with the provisions of section 251 of chapter 25. The department shall require the person to whom such girl is entrusted to report to said department as often as once in 3 months the conduct and behavior of such girl and whether she remains under such person, and if not, where she is. Said department shall take care that the terms of such trust are fulfilled, and the girl well treated, and if it believes that by reason of her misconduct, vicious inclinations or surroundings, she is in danger of falling into habits of vice or immorality, or that her welfare is in any way imperiled, it may cancel such trust and resume charge of such girl with the same powers as before the trust was made. The powers of said department with respect to any girl entrusted, as herein provided, to the care of a suitable person are not affected thereby. Said department may authorize any officer thereof, or the superintendent of said school, to entrust said girls to the care and service of a suitable person or persons without indenture, to see to their welfare during such service and to require their return to said school at discretion. The department shall have regard to the character of those to whom any girl is entrusted. At the discretion of said department, any such girl deemed by it to be eligible shall be granted entrance into the Hallowell high school under the same conditions as pupils residing in towns which do not maintain a standard secondary school, as provided in section 107 of chapter 41, except that tuition for such girl shall be paid by the said department from the appropriation to the state school for girls and shall be based on the average instructional cost per pupil for the year preceding that for which the tuition is paid to be determined as pro-

vided by the provisions of section 108 of chapter 41. (R. S. c. 23, § 86. 1945, c. 112, § 1. 1949, c. 349, § 48.)

Cross reference.—See note to § 52.

Department has all powers of guardian or parent.—By this section the department of institutional service has all the powers of a guardian as to the person, property, earnings and education of a girl committed to the state school for girls during the term of her commitment, and all powers which parents have over their children. As guardian they may appear for and represent the minor in all legal proceedings unless another is appointed for purpose as guardian or next friend. Having the authority of a parent, the board can act as next friend. Harding v. Skolfield, 125 Me. 438, 134 A. 567.

Cited in Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Sec. 89. Alternative sentence; juvenile delinquency.—If a girl of the age herein limited is found guilty of an offense punishable with fine or imprisonment, other than imprisonment for life, she may be sentenced in the alternative to the state school for girls, or if not received therein, or if discharged therefrom for misbehavior, to such punishment as the law provides for like offenses. The record in the event of conviction in all such cases shall be that the accused was convicted of juvenile delinquency, and the court shall have power at the hearing of any such case to exclude the general public other than persons having a direct interest in the case. The records of any such case by order of the court may be withheld from indiscriminate public inspection, but such records shall be open to inspection by the parent or parents of such child or lawful guardian or attorney of the child involved. (R. S. c. 23, § 88.)

Sec. 90. Department may refuse to receive, or may discharge any girl committed.—The department may refuse to receive any girl committed to said school or may discharge any girl whose continuance, by reason of her vicious example and influence or other misconduct, is in their opinion prejudicial to the school, or who for any reason ought not to be retained therein. Its refusal may be certified on the warrant of commitment, and she shall remain in the custody of the officer having the same, to be disposed of as prescribed in the preceding section. If it discharges her, it shall set forth its reasons therefor in a warrant of discharge, and any proper officer may return her to the court which committed her or commit her as provided in the alternative sentence. (R. S. c. 23, § 89. 1945, c. 112, § 2; c. 378, § 22.)

Sec. 91. Commitment of idle vicious minors.—A parent or guardian of any minor child between the ages of 9 and 17 years, the municipal officers, a police officer or any 3 inhabitants of any city or town, where such child may be found, may complain in writing to the judge of probate having jurisdiction, or to the judge of the municipal court for such city or town, alleging that such minor child is leading an idle or vicious life, or has been found in circumstances of manifest danger of falling into habits of vice or immorality, and request that such child may be committed to the guardianship of the officers of either the state school for boys or the Hallowell state school for girls, or to the custody of the department of health and welfare. Provided, however, that no boy may be committed to the state school for boys who is under the age of 11 years, or who is deaf, dumb, non compos or insane. The court shall appoint a time and place of hearing and order notice thereof to the parents or guardian of said child, if any, to such child, and to the department of health and welfare at least 5 days prior to the date set for said hearing, and at such time and place, may examine into the truth of said allegations, and if satisfactory evidence thereof is adduced, and it appears that the welfare of such minor child requires it, he may order such minor child to be committed to the custody and guardianship of the officers of the state school for boys or the Hallowell state school for girls during his or her minority, unless sooner discharged by process of law, or order such child committed to the custody of the department of health and welfare subject to provisions of sections

250, 251 and 252 of chapter 25. All precepts issued in pursuance of this section may be executed by any officer who may execute civil process. Upon commitment of a girl, if the officer to whom the mittimus or order of commitment is addressed is not a woman, the judge shall designate a woman to be an attendant to accompany her to the Hallowell state school for girls, and the fees of judges of municipal courts and officers shall be the same as for similar services in civil cases, and the fees of such woman attendant shall be the same as provided for aids in criminal cases, and when not otherwise provided for, all fees shall be audited by the county commissioners and paid from the county treasury. (R. S. c. 23, § 91.)

The legality of the minor's imprisonment must be determined by the mittimus by virtue of which he is held. Hibbard v. Bridges, 76 Me. 324.

Mittimus must follow language of this section.—The mittimus to be sufficient must closely follow the language of this section and specifically order that the minor child be "committed to the custody and guardianship of the officers" of the state school "during his minority." Hibbard v. Bridges, 76 Me. 324.

And show jurisdiction of court.—A complaint under this section is not for a crime or misdemeanor. This section confers on the courts named a special jurisdiction for the guardianship of minors between the ages named. They may be taken from their parents, and restrained of their liberty in the state school during their minority. The mittimus should show the jurisdiction of the court. Hibbard v. Bridges, 76 Me. 324.

Applied in State v. White, 145 Me. 381, 71 A. (2d) 271.

Sec. 92. Record filed with clerk of courts; appeal; recognizance of appellant; fees.—The judge or justice before whom a minor is brought under the provisions of this chapter shall make a brief record of his proceedings, and transmit it with all the papers in the case to the clerk of courts for the county, who shall file and preserve them in his office. A minor committed to either school may appeal from the order of commitment in the manner and to the court provided in case of appeals from trial justices, and the case shall be entered, tried and determined in the appellate court. In case of appeal, in lieu of any other recognizance, the justice or judge shall require the recognizance, in a reasonable sum, of some responsible and proper person for the custody, care and nurture of said minor pending the appeal, and for his or her appearance to abide the final order of the appellate court, and in default thereof, may commit said minor to either school, as the case may be, until final disposition of the appeal. In such cases, no fees shall be required of the appellant for recognizance or copies of papers. (R. S. c. 23, § 92. 1949, c. 71.)

Cross reference.—See c. 146, §§ 22, 29, re appeals from magistrates; fees and costs.

History of section.—See State v. White, 145 Me. 381, 71 A. (2d) 271.

Cited in Hibbard v. Bridges, 76 Me. 324.

Sec. 93. Age, parentage, birthplace and offense certified on mittimus; expenses of clothing, etc., paid by the state.—The court or justice by whom a girl is committed shall certify on the mittimus, her age, parentage, birthplace, the charge on which she is committed and the city or town where she resided at the time of her arrest, so far as he can ascertain such particulars; and this certificate shall be conclusive evidence of her age. The expenses of clothing and subsistence of all girls committed to said school shall be paid by the state. (R. S. c. 23, § 93.)

Sec. 94. Incorrigible girl, 16 years of age and over, may be transferred to reformatory for women.—If, in the opinion of the department, any girl, under the guardianship of the department or who may hereafter be committed to the school, who has attained the age of 16 years, is incorrigible, it may certify the same on the original mittimus and have it signed by the commissioner, or such bureau director as he may designate, whereupon said girl shall be trans-

ferred from said state school for girls to the reformatory for women, together with the original mittimus and certificate thereon. It shall be the duty of the officers of the reformatory for women to receive any girl so transferred, and the remainder of the original commitment shall be executed at the reformatory for women. (R. S. c. 23, § 94.)

Stated in Ex parte Gosselin, 141 Me. 412, 44 A. (2d) 882.

Hospitals for the Mentally Ill.

Cross Reference.—See c. 10, § 22, sub-§ VIII, re construction of words "insane person" as applied to §§ 96-102.

Sec. 95. Hospitals for mental patients. — The state shall maintain 2 hospitals for the mentally ill, one at Bangor called the Bangor state hospital and the other at Augusta, called the Augusta state hospital. (R. S. c. 23, § 95. 1951, c. 374, § 1.)

Sec. 96. Duties and powers of the superintendent; removal.—The head of each hospital shall be called the superintendent and shall be a physician. He shall reside constantly at the hospital and have general superintendence of the hospital and grounds under the direction of the department; and shall receive all patients in need of special care and treatment, legally sent to the hospital, that the accommodations permit, subject to the regulations of the department.

The superintendent of a state institution within the jurisdiction of the department may be removed by the commissioner, with the approval of the governor and council, for inefficiency, failure to perform duties properly or other good cause. The superintendent shall be notified of the proposed action, shall be furnished with a copy of the reasons therefor and shall be given a hearing before the commissioner and the governor and council, and be allowed to answer the charges preferred against him, either personally or by counsel. Within 20 days after such hearing the superintendent may bring a petition in the superior court within and for the county where the institution is located, praying that the action of the commissioner and the governor and council may be reviewed by the court, and, after such notice to the commissioner and the governor and council as the court deems necessary, it shall review such action, hear the witnesses and shall affirm the decision of the commissioner and the governor and council unless it shall appear that such decision was made without proper cause or in bad faith, in which case such decision shall be reversed and the petitioner be reinstated in his office without loss of compensation. (R. S. c. 23, § 96. 1947, c. 192, § 1.)

Sec. 97. Rules and regulations.—The superintendent of each hospital shall keep posted, in conspicuous places about the hospital under his charge, printed cards containing the rules and regulations prescribed for the government of employees or shall furnish employees with printed rules and regulations. (R. S. c. 23, § 97. 1951, c. 374, § 2.)

Sec. 98. Ill treatment of patients by employees.—When it appears that any employee treats a patient with injustice or inhumanity, he shall immediately be discharged. When the superintendent is satisfied that any employee abuses or ill treats an inmate of the hospital, he shall discharge him at once, and make complaint of such abuse or ill treatment before the proper court; and such employee, on conviction, shall be punished by a fine of not less than $100, nor more than $500, or by imprisonment for not more than 90 days. In a trial of any officer or employee for willfully inflicting an injury upon the person of any patient, the statement of any patient, cognizant thereof, shall be taken and considered for what it is worth; and no one connected with the hospital shall sit upon the jury trying the case. (R. S. c. 23, § 98.)

Sec. 99. Inquest held on sudden death.—In case of the sudden death of a

patient in either hospital under circumstances of reasonable suspicion, an examination and inquest shall be held as in other cases, and the superintendent or department shall cause a medical examiner to be immediately notified for that purpose. (R. S. c. 23, § 99.)

Sec. 100. Patients may write to commissioner.—All mail addressed by patients to the commissioner shall be forwarded forthwith unopened. (R. S. c. 23, § 100. 1951, c. 374, § 3.)

Sec. 101. Letters to be delivered to patients, unopened.—The superintendent, or party having charge of any patient, shall deliver to him any letter or writing to him directed, without opening or reading the same, provided that such letter has been forwarded by the commissioner, or is directed to such persons as the commissioner has authorized to send or receive letters without the department's inspection. (R. S. c. 23, § 101.)

Sec. 102. Transfer of patients; cost.—The department may transfer any patient from one hospital for the mentally ill to the other, or from one building for the criminal insane to any other building used for the care of the mentally ill, whenever in its judgment the welfare of the patients or of either institution will be promoted thereby. The expense attending such transfer shall be paid out of the funds of the hospital making the transfer and shall be a charge on the person liable for the board of such patient. (R. S. c. 23, § 102. 1951, c. 374, § 4.)

See § 116, re transfer of insane persons from out-of-state institutions.

Commitment of the Insane.

Repealing law held unconstitutional.—Sections 103 to 117 were repealed by section 5, Chapter 374, Public Laws of 1951, and replaced by the provisions of that law. However, certain provisions of that law were held unconstitutional, and it was held that these sections are still in effect. See Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 103. Duties of parents and guardians of insane minors.—Parents and guardians of insane minors, over 12 years of age, if of sufficient ability to support them there, shall, within 30 days after an attack of insanity, without legal examination, send them to either the Augusta or the Bangor state hospital and give to the department the bond required; or they may send them to some other hospital for the insane, within said period. (R. S. c. 23, § 104.)

Cross reference.—See c. 10, § 22, sub-§ VIII, re construction of words "insane person" as applied to §§ 103-112.

Cited in Paine v. Folsom, 107 Me. 337, 78 A. 378.

Sec. 104. Municipal officers may commit to the hospitals.—Insane persons, over 12 years of age, not thus sent to any hospital, may be admitted to state institutions for the insane but shall be subject to examination as hereinafter provided. The municipal officers of towns shall constitute a board of examiners, and on complaint in writing of any blood relative, husband or wife of said alleged insane person, or of any justice of the peace, they shall immediately inquire into the condition of any person in said town alleged to be insane; shall appoint a time and place for a hearing by them of the allegations of said complaint, and shall cause to be given in hand to the person so alleged to be insane, at least 24 hours prior to the time of said hearing, a true copy of said complaint, together with a notice of the time and place of said hearing and that he has the right and will be given opportunity then and there to be heard in the matter; shall call before them all testimony necessary for a full understanding of the case; and if they think such person insane and that his comfort and safety or that of others interested will thereby be promoted, they shall forthwith send him to either the Augusta

or the Bangor state hospital or to an institution established and maintained within this state by the United States government for the care and treatment of persons who have been in the military or naval service of the United States and are suffering from mental disease, with a certificate stating the fact of his insanity, and the town in which he resided or was found at the time of his examination, together with a statement of facts under oath satisfactory to the department in regard to the financial ability of such patient, or of any of his relatives legally liable to pay for his support, and directing the superintendent to receive and detain him until he is restored or discharged by law, or by the superintendent or department. (R. S. c. 23, § 105.)

Purpose of section.—By the provisions of this and the following sections there is created in every organized community in the state a board empowered to commit, and in all cases the person alleged to be insane is to be served with notice of the proceedings and given an opportunity to be heard on the question of his insanity and the necessity of his commitment to the mental hospital. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Section mandatory.—All the investigation and evidence required by this and the following sections should be had before a commitment can legally be ordered, and the record should show it affirmatively. Kittery v. Dixon, 96 Me. 368, 52 A. 799.

A person cannot now be committed to the insane hospital, except a minor committed by the parent or guardian, without an inquisition and examination by the municipal officers, after at least twenty-four hours actual notice to the person alleged to be insane. Paine v. Folsom, 107 Me. 337, 78 A. 378.

And prescribes entire proceedings necessary.—This section prescribes in detail all that is to be done by municipal officers to effect a legal commitment of a person to the hospital. Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

And record required is complete.—The record required by this section is complete without reference to the evidence required by § 106. Rockport v. Searsmont, 101 Me. 257, 63 A. 820. See notes to § 106.

Applicability of section in emergency cases.—Sections 110 and 111 did not limit the applicability of this section and § 106 to emergency cases. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115. See notes to § 105.

Cited in Naples v. Raymond, 72 Me. 213; Dexter v. Sangerville, 70 Me. 441.

Sec. 105. Emergency cases.—Pending the issue of such certificate of commitment by the municipal officers, such superintendent may receive into his hospital any person so alleged on complaint to be insane, provided such person be accompanied by a copy of the complaint and physicians' certificate; which certificate shall set forth that in the judgment of the physicians the condition of said person is such that immediate restraint and detention is necessary for his comfort and safety or the safety of others; and provided further, that unless within 15 days thereafter said superintendent shall be furnished with the certificate of commitment hereinbefore provided for, the detention of such person shall cease. Said municipal officers shall keep a record of their doings and furnish a copy to any interested person requesting and paying for it.

In addition to the certificate of commitment, a statement of facts under oath in regard to the financial ability of such patient, or of any of his relatives legally liable to pay for his support, shall be furnished the superintendent of the hospital. (R. S. c. 23, § 106.)

Policy considerations. — Provision for placing a person who is mentally ill to the degree that he is dangerous to himself or others in immediate proper restraint is essential. Such timely restraint is essential not only to the immediate welfare of the person who is mentally ill and perhaps to his ultimate recovery but also to the safety of society. A comprehensive law providing for the commitment of the mentally ill to hospitals which fails to make provision for emergency commitment of the dangerous is woefully inadequate both from the legal, administrative and medical viewpoint. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

There are occasions which require the immediate taking into protective custody of one who is mentally ill because of the immediate danger that he will cause injury to himself or others. The best interests of the patient may in some cases demand

immediate treatment pending the completion of proceedings for his ultimate commitment to a hospital for the mentally ill. This section and sections 104 and 106 not only take care of all of these situations but also respect the constitutional rights of the one alleged to be insane. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Purpose and strictness of section.—This section provides for emergency temporary commitments pending final decision on the petition. The making of such statutory provisions is a proper exercise of the police power by the state. Such action is but ancillary to a pending proceeding which is to be heard in due course after notice and opportunity to be heard. It can be taken only in those cases where two physicians certified to the municipal officers that immediate restraint and detention is necessary for the comfort and safety of the person alleged to be insane or for the safety of others. Immediate detention without notice and an opportunity to be heard can only be justified when the immediacy of such action is required for the safety of either the person restrained or for the safety of others. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Abuse of process minimized.—The danger of abuse of the emergency process is minimized by the provision that unless a certificate of commitment is received by the superintendent within fifteen days the detention should cease. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 106. Evidence of 2 physicians required.—In all cases of preliminary proceedings for the commitment of any person to the hospital, to establish the fact of the insanity of the person to whom insanity is imputed, the evidence of at least 2 reputable physicians given by them under oath before the board of examiners shall be required, together with a certificate signed by such physicians and filed with said board, that in their opinion such person is insane, such evidence and certificate to be based upon due inquiry and personal examination of the person to whom insanity is imputed; and a certified copy of the physicians' certificate shall accompany the papers of commitment of the insane person to the hospital. (R. S. c. 23, § 107.)

Cross reference.—See notes to § 104.

Compliance with section is mandatory.—Compliance with this section is imperative and mandatory, not necessarily as a matter of record but as a matter of fact, independent of the other proceedings required for commitment. Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

And necessary jurisdictional fact in commitment proceedings. — The evidence of physicians required by this section, is entirely additional to the requirements of section 104 and need form no part of the record of the things therein specified to be done but must become, if the alleged default of such evidence is put in issue, a matter of proof, dehors the record, as a necessary jurisdictional fact upon which to base any legal proceedings of commitment on the part of the municipal officers. Some record must show that the requirements of this section have been complied with. Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

Hearing of evidence from the physicians as well as their certificate is made by this section indispensable. Naples v. Raymond, 72 Me. 213.

Physician must make actual examination and give personal testimony.—The certificate of the physicians is not enough; they must be examined as witnesses, and testify from actual examination of the patient. Kittery v. Dixon, 96 Me. 368, 52 A. 799.

Stated in Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 107. Jurisdiction of justices of peace to commit.—If the municipal officers neglect or refuse, for 3 days after complaint is made to them, to examine and decide any case of insanity in their town, complaint may be made by any blood relative, husband or wife of said alleged insane person, or by any justice of the peace, to 2 justices of the peace; and the 2 justices to whom such application is made shall immediately inquire into the condition of such alleged insane person and shall proceed in the manner provided in section 104. (R. S. c. 23, § 108.)

Municipal officers must have had power to act.—There can be no neglect or refusal, in the sense of this section, under a state of circumstances where municipal officers have not power to act. Thus, two justices of the peace have no jurisdiction to order the removal of an insane person to the hospital, upon the neglect of the

municipal officer to do so, in a case where such insane person is at the time legally confined in jail upon criminal process. Gray v. Houlton, 63 Me. 566.

Sec. 108. Justices to keep record; fees.—Such justices shall keep a record of their doings and furnish a copy thereof to any person interested requesting and paying for it; they shall be entitled to the same fees as for a criminal examination, to be paid by the person or corporation liable in the first instance for the support of the insane person in the hospital. (R. S. c. 23, § 109.)

Sec. 109. Execution of order for commitment.—When such justices order a commitment to a hospital, the municipal officers of the town where the insane resides, or such other person as the justices direct, shall cause such order to be complied with forthwith at the expense of the town; and after such commitment is made, the justices shall decide and certify the expenses thereof. (R. S. c. 23, § 110.)

Sec. 110. Jurisdiction of judges of probate.—The judges of probate in the several counties shall likewise have jurisdiction to examine insane persons except in those cases covered by section 103, and upon complaint in writing of any blood relative, husband or wife of said alleged insane person, or of any justice of the peace, accompanied by the certificate of some reputable physician stating that in his opinion such person is insane, may immediately appoint a time and place for hearing, within the town or city in which said person resides or is found; and shall cause to be given in hand to the person so alleged to be insane, at least 24 hours prior to the time appointed for said hearing, a copy of said complaint attested by the register of probate of the county in which said hearing is to be held, together with a notice of the time and place of said hearing, and that he has a right and will be given opportunity there and then to be heard in the matter, and a like copy of said complaint and of said notice of hearing shall be served upon the clerk of the town in which said person resides or is found. Nothing herein contained shall require a judge of probate to appoint a hearing for the purpose of this section in any town other than the shire town of the county, or the town in which said person resides. (R. S. c. 23, § 111.)

This section and § 111 provide an alternate procedure applicable to all cases emergent or otherwise. Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115. See notes to § 104.

Cited in Lourie v. Melnick, 128 Me. 148, 146 A. 84.

Sec. 111. Proceedings at hearing.—The judge of probate before whom the hearing is held shall have authority to summon such witnesses as shall be necessary for the full understanding of the case; and if he shall decide that such person is insane, and that his comfort and safety, or that of others interested will thereby be promoted, he shall forthwith send him to either the Augusta or the Bangor state hospital, or to an institution established and maintained within this state by the United States government for the care and treatment of persons who have been in the military or naval service of the United States and are suffering from mental disease, with a certificate stating the fact of his insanity and the town in which he resided or was found at the time of the examination, and directing the superintendent to receive and detain him until he is restored or discharged by law or by the superintendent or department. The register shall keep a record of the doings in each case and furnish a copy to any interested person requesting and paying for it. Excepting sections 103 and 104, all other sections of this chapter, relating to the commitment, expense of supporting and discharge of the insane, shall also apply to commitments under the provisions of this section. (R. S. c. 23, § 112.)

Cross reference.—See notes to § 104.

Cited in Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 112. Jurisdiction first taken.—The municipal officers or the judge of probate first taking jurisdiction of a complaint referred to in sections 104 and 110, shall have exclusive jurisdiction in the matter until such complaint is finally disposed of. In case of refusal to commit by one of said tribunals after notice and hearing, no complaint shall be made to the other tribunal with reference to the same person within 30 days after such decision is recorded; and only after application to each of said tribunals and neglect or refusal for 3 days on the part of each to act, shall proceedings under section 107 be taken. (R. S. c. 23, § 113.)

Sec. 113. Examination of insane persons.—No person shall be declared insane or sent to any institution for the insane by municipal officers or by a judge of probate, or by any other person or persons constituting a board of examiners charged with authority to inquire into the condition of a person alleged to be insane, unless the person alleged to be insane shall first have been examined by 2 reputable physicians, each of whom shall have been a duly licensed and practicing physician in this state, who shall be appointed by said municipal officers or by the probate judge, or by any examining board before whom proceedings are held, and neither of whom, or of said members, shall be related to the person alleged to be insane or related to the person or persons making complaint, and such physicians shall have certified that the person examined is in fact insane. (R. S. c. 23, § 114.)

Sec. 114. Penalty for false testimony.—Any person who shall willfully cause or attempt to cause, or who shall conspire with any other person to cause any person who is not insane to be committed to any institution for the insane, and any person who shall knowingly certify falsely to the insanity of any person in any certificate, or testify falsely at any hearing to inquire into the condition of a person alleged to be insane, and any person who shall knowingly report falsely to any court or to any person or persons charged with authority to inquire into the condition of the person alleged to be insane, shall be punished by a fine of not less than $100, nor more than $1,000, or by imprisonment in the state prison for not less than 1 year, nor more than 5 years, or by both such fine and imprisonment. (R. S. c. 23, § 115.)

Sec. 115. Voluntary patients may be received at state hospitals for insane; release on request.—The superintendent in charge of either of the state hospitals to which an insane person may be committed may receive and detain therein, as a boarder and patient, any person who is desirous of submitting himself to treatment and who makes written application therefor, and whose mental condition, in the opinion of the superintendent or physician in charge, is such as to render him competent to make the application. Such superintendent shall give immediate notice of the reception of such voluntary patient to the department. Such patient shall not be detained for more than 10 days after having given notice in writing of his intention or desire of leaving the institution. The charges for support of such a voluntary patient shall be governed by the laws or rules applicable to the support of an insane person in such institution. (R. S. c. 23, § 116.)

Sec. 116. Transfer of insane persons from out of the state institutions.—The commissioner may, upon the request of a competent authority of a state other than Maine, or of the District of Columbia, grant authorization for the transfer of an insane patient directly to a Maine state hospital; provided that said patient has a settlement in a Maine municipality acknowledged by the municipal officers thereof; that said patient is currently confined in a recognized state institution for the care of the insane as the result of proceedings considered legal by that state; that a duly certified copy of the original commitment proceedings and a copy of the patient's case history is supplied; that if, after investigation, the commissioner shall deem such a transfer justifiable; and that all expenses incident to

such a transfer be borne by the agency requesting same. When the commissioner has authorized such a transfer, the superintendent of the state hospital designated by him shall receive the patient as having been regularly committed to said hospital under the laws of this state. (R. S. c. 23, § 117.)

Sec. 117. Care of insane members of armed forces; status.—Any member of the armed forces of the United States, who was a resident of this state at the time of his induction into the service, who shall be determined by a federal board of medical officers to have a mental disease not incurred in line of duty, shall be received at either of the state hospitals for the insane in the discretion of the commissioner, without formal commitment, upon delivery of such person, together with the findings of such board of medical officers that such person is insane, at the hospital designated by said commissioner.

After delivery of such person at the hospital designated by said commissioner, his status shall be the same as if he had been committed to the hospital under the provisions of section 104. (R. S. c. 23, § 118.)

Disposal of Insane Criminals.

Repealing law held unconstitutional.—Sections 118 to 130 were repealed by section 5, Chapter 374, Public Laws of 1951, and replaced by the provisions of that law. However, certain provisions of that law were held unconstitutional, and it was held that these sections are still in effect. See Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 118. Proceedings when a person, committed to jail on a criminal charge, pleads insanity.—When a person is indicted for an offense, or is committed to jail on a charge thereof by a trial justice or judge of a municipal court, any justice of the court before which he is to be tried, if a plea of insanity is made in court or he is notified that it will be made, may, in vacation or term time, order such person into the care of the superintendent of either insane hospital, to be detained and observed by him until further order of court or any justice thereof in vacation, that the truth or falsity of the plea may be ascertained. The superintendent of the hospital to which such person is committed shall, within the first 3 days of the term next after such commitment, and within the first 3 days of each subsequent term so long as such person remains in his care, report to the judge of the court before which such person is to be tried, whether his longer detention is required for purposes of observation. (R. S. c. 23, § 119. 1947, c. 94.)

Sec. 119. Proceedings when grand jury omit to indict, or traverse jury acquit on account of the insanity of the accused; transfer from one hospital to the other.—When the grand jury omit to find an indictment against any person arrested to answer for an offense, by reason of his insanity, they shall certify that fact to the court; and when a traverse jury, for the same reason, acquit any person indicted, they shall state that fact to the court when they return their verdict; and the court, by a precept stating the fact of insanity, may commit him to the department for the criminal insane at the Augusta state hospital or to either insane hospital. The court, or any justice thereof in vacation, upon application may for cause shown, whenever it appears that the peace and safety of the community will be promoted, order any person who is now or may hereafter be committed as provided in this section removed and transferred from one hospital for the insane to the other, and enforce such order by appropriate precept. The expense of such transfer shall be paid as provided in section 102. Any person so committed shall be discharged by the court having jurisdiction of the case only on satisfactory proof that his discharge will not endanger the peace and safety of the community; and when such person so discharged is on satisfactory proof again found insane and dangerous, any justice of the superior court may, by a precept

stating the fact of his insanity, recommit him to the department for the criminal insane at the Augusta state hospital or to either insane hospital. (R. S. c. 23, § 120.)

Sec. 120. Discharge of person so committed to the hospital; recommitment.—Any person so committed to an insane hospital may be discharged by any justice of the superior court, in term time or vacation, on satisfactory proof that his discharge will not endanger the peace and safety of the community; or such justice may, on application, commit him to the custody of any friend who will give bond to the judge of probate for the county of Kennebec, if such commitment was to the Augusta state hospital, or to the judge of probate for the county of Penobscot, if such commitment was to the Bangor state hospital, with sufficient sureties, approved by said judge of probate, conditioned for the safekeeping of such insane person, and the payment of all damages which any person may sustain by his acts. When, on satisfactory proof, he is again found insane and dangerous, any justice of the superior court may, by a precept stating the fact of his insanity, recommit him to the insane hospital from which he was discharged. (R. S. c. 23, § 121.)

Sec. 121. Support at hospital.—The person so committed shall be there supported at his own expense, if he has sufficient means; otherwise, at the expense of the state. (R. S. c. 23, § 122.)

Obligation to pay does not arise from contract.—The obligation of the defendant to pay for support at the state hospital arises not from a contract, expressed or implied, but solely by this section. Carpenter v. Coulombe, 145 Me. 400, 75 A. (2d) 849.

Sec. 122. Governor to appoint an examiner of insane convicts in each county; proceedings when a prisoner becomes insane.—The governor shall appoint in each county in the state a competent physician, who shall be a resident of the county, to act as an examiner of insane convicts in the county jail of the county. When a convict in the state prison or the county jail becomes insane or a convict whose sentence has expired is there detained, and in the opinion of the warden of the state prison or keeper of the jail is insane, the warden shall forthwith notify the prison physician and the jailer shall forthwith notify such examiner in the county of the fact, and the prison physician or such examiner shall forthwith investigate the case and make a personal examination of the convict or party so detained; and if such physician finds such convict or person detained to be insane, he shall forthwith certify such fact in writing to the warden of the state prison or keeper of such jail. Said warden shall apply in writing to the judge of the municipal court for the city of Rockland in the county of Knox, and such keeper shall apply to the judge of the municipal court in the place where such jail is located, if any; otherwise to the judge of the nearest municipal court in the county, and if there is no municipal court in such county, to any justice of the superior court, stating the facts connected therewith, and praying that the condition of such convict or person detained as aforesaid may be inquired into and such decree made as to his commitment or detention as justice may require. (R. S. c. 23, § 123.)

Sec. 123. Hearing to be appointed by judge; proceedings thereat; appointment of guardian ad litem and counsel.—Such judge or justice mentioned in the preceding section shall thereupon appoint a time and place for a hearing by him of the allegations of such application, and shall cause a true copy of said application to be given in hand to the person so alleged to be insane at least 24 hours prior to the time of said hearing, together with a notice of the time and place of said hearing, and that he has a right and will be given an opportunity then and there to be heard in the matter; he shall call before him all testimony necessary for a full understanding of the case, and shall personally examine and

interview such person, whether he shall or shall not appear at such hearing, and shall require and receive evidence of at least 2 reputable physicians not in the employ of the state prison or either of the said jails, all such evidence being given under oath before such judge, with the certificate signed by such physicians and filed with the papers in the case, that in their opinion such person is or is not insane. Such evidence and certificate shall be based upon due inquiry and personal examination of the person to whom insanity is imputed. At said hearing the judge shall appoint a guardian ad litem for the person so alleged to be insane and may in his discretion appoint counsel for such person. The compensation of such guardian and counsel shall be fixed by the judge and included in the expense of the proceedings to be paid by the state or county. (R. S. c. 23, § 124.)

Sec. 124. Commitment, if person is adjudged insane.—If upon the foregoing proceedings such judge shall determine that such convict or person detained as aforesaid is insane and that his comfort and safety or that of others interested will thereby be promoted, he shall, in case of such convict or person so detained in the state prison, commit him to the department for the criminal insane at the Augusta state hospital; and in the case of a convict or person so detained in either of the county jails, he shall commit him to one of the insane hospitals, with a certificate stating the fact of his insanity and directing that he shall be received and detained accordingly until he is restored or discharged by law. The certificate of said judge shall state the town in which the prisoner or person detained, so committed, resided at the time of his original commitment to prison or jail. A certified copy of the certificate signed by the prison physician shall accompany said order of commitment made hereunder, and said judge shall keep a record of his doings and furnish a copy to any interested person requiring and paying for it. (R. S. c. 23, § 125.)

Sec. 125. Persons recovering before expiration of sentence.—If a person so committed as insane is restored or discharged from such commitment before the expiration of the term of the sentence on which he was originally committed, he shall be returned to the prison or jail in which he was serving his original sentence, and shall be there detained until the time when his original sentence would have expired. (R. S. c. 23, § 126.)

Sec. 126. Fees for examination and certificate.—The fee of each physician for such examination and certificate and testifying before said judge shall be $5. All the fees, costs and expenses incident to any such hearing shall be taxed by the judge, and in any case relating to the state prison, audited and allowed by the state, and in any cases arising in either of the county jails, by the county commissioners for such county, who shall include therein a reasonable compensation for such judge, and said fees and costs shall be paid by the state and county respectively. (R. S. c. 23, § 127.)

Sec. 127. Commitment of inmates of jails and persons under indictment.—Inmates of the county jails and persons under indictment becoming insane before final conviction may be committed to either insane hospital by any justice of the superior court in the county where such person is to be tried or the case is pending, for observation, under such limitations as such judge may direct. (R. S. c. 23, § 128.)

Sec. 128. Municipal judges may hold court in towns where prison or jails are located.—The judge of the municipal court of the city of Rockland is authorized for the purposes provided in the 8 preceding sections, if he shall see fit, to hold his court in the town of Thomaston, and the judge of any municipal court to which application is made by any jailer, and which court is located in a town other than that in which the jail is situated and which is within the same county, may hold his court for the purposes herein provided in the town where such jail is located. (R. S. c. 23, § 129.)

Sec. 129. Commitment of persons insane when motion for sentence is made; proceedings if insane at expiration of term of commitment; support.—If a person convicted of any crime, in the superior court, is found by the judge of such court to be insane when motion for sentence is made, the court may cause such person to be committed to the department for the criminal insane at the Augusta state hospital under such limitations as the court may direct; provided that the crime of which such person is convicted is punishable by imprisonment in the state prison; otherwise such commitment shall be to one of the insane hospitals; if at the expiration of the period of commitment to the department for the criminal insane at the Augusta state hospital such person has not become of sound mind in the opinion of the superintendent of the Augusta state hospital, he shall be removed to one of the insane hospitals. Persons committed by a justice of the superior court before final conviction, or after conviction and before sentence, whether originally committed or subsequently removed thereto, and insane convicts after the expiration of their sentences, shall be supported while in the insane hospital in the manner provided by law in the case of persons committed by municipal officers, and the provisions of sections 137 to 139, inclusive, shall apply to such cases. (R. S. c. 23, § 130.)

Sec. 130. Commitment of women regulated.—When a woman is committed to either of the insane hospitals, the officers committing her shall, unless she is to be accompanied by a father, husband, brother or son, designate a woman to be an attendant or one of the attendants to accompany her thereto. (R. S. c. 23, § 131.)

See c. 10, § 22, sub-§ VIII, re construction of words "insane person."

Recommitment of Patients.

Cross Reference.—See c. 10, § 22, sub-§ VIII, re construction of words "insane person" as applied to §§ 131-133.

Repealing law held unconstitutional.—Sections 131 to 134 were repealed by section 5, Chapter 374, Public Laws of 1951, and replaced by the provisions of that law. However, certain provisions of that law were held unconstitutional, and it was held that these sections are still in effect. See Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 131. Application by superintendent for recommitment.—Whenever the superintendent of either hospital is in doubt as to the legality of the commitment of any person, now or hereafter committed to the hospital of which he is superintendent, he may apply in writing to the judge of the municipal court of the city where such person is then detained under such commitment, stating therein the material facts connected therewith and annexing thereto copies of all papers under which such person is so detained, with a prayer that the condition of such person may be inquired into and such decree made as to his commitment as justice may require. (R. S. c. 23, § 132.)

Cited in Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115; Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

Sec. 132. Proceedings; notice, hearing, adjudication, record.—Such judge mentioned in section 131 shall thereupon appoint a time and place for a hearing by him of the allegations of such application; shall cause to be given in hand to the person so alleged to be insane, at least 24 hours prior to the time of said hearing, a true copy of said application together with a notice of the time and place of said hearing and that he has a right and will be given opportunity then and there to be heard in the matter; shall call before him all testimony necessary for a full understanding of the case; shall personally examine and interview such

person whether he shall or shall not appear at such hearing; shall require and receive the evidence of at least 2 reputable physicians, not in the employ of either hospital to be given under oath before such judge, together with a certificate signed by such physicians and filed with such judge that in their opinion such person is insane, such evidence and certificate to be based upon due inquiry and personal examination of the person to whom insanity is imputed; and if such judge thinks such person insane and that his comfort and safety, or that of others interested, will thereby be promoted, he shall forthwith commit him to that insane hospital the superintendent of which made said application, with a certificate stating the fact of his insanity, and the town in which he resided or was found at the time of the examination referred to in the original papers of commitment annexed to the foregoing application, and directing the superintendent to receive and detain him until he is restored or discharged by law, or by the superintendent or department. A certified copy of the physicians' certificate shall accompany said order of commitment made hereunder. Such judge shall keep a record of his doings and furnish a copy to any interested person requesting and paying for it. (R. S. c. 23, § 133.)

Purpose of section.—The very object of this section is to cure the defects of the illegal commitment by a legal recommitment, and thus make valid all the proceedings of the illegal commitment, and place them upon precisely the same ground as if they had been legal. Rockport v. Searsmont, 103 Me. 495, 70 A. 444.

Cited in Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 133. Expenses paid by state.—All the fees, costs and expenses incident to any such hearing shall be taxed by such judge, who shall include therein a reasonable compensation for such judge. Payment thereof shall be made from the institution appropriation. (R. S. c. 23, § 134. 1949, c. 125.)

Cited in Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 134. Inquiry into cases of alleged unreasonable detention.—A friend of any person adjudged insane and committed to either state hospital, thinking such person is unreasonably detained, may apply in writing to any justice of the superior court, who shall inquire into the case and summon before him such witnesses as in his judgment may be necessary and upon such application vacate such commitment, and if such person was committed under a sentence following conviction for crime and the sentence has not expired, remand him to the proper custody, and if the original sentence has expired, discharge such person. He shall tax legal costs and shall decide whether they shall be borne by the petitioner or by the state. If such application is unsuccessful, it shall not be renewed until the expiration of 1 year. (R. S. c. 23, § 135.)

Expenses of Commitment and Support.

Cross reference.—See c. 10, § 22, sub-§ VIII, re construction of words "insane person" as applied to §§ 135-139.

Repealing law held unconstitutional.—Sections 135 to 139 were repealed by section 5, Chapter 374, Public Laws of 1951, and replaced by the provisions of that law. However, certain provisions of that law were held unconstitutional, and it was held that these sections are still in effect. See Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 135. Support of persons committed charged to state.—The officers ordering the commitment of a person unable to pay for his support, or becoming unable to pay for his support after commitment, or their successors, or any officer with like power to commit, shall in writing certify that fact to the department and that he has no relatives liable and of sufficient ability to pay for his support, and such certificate shall be sufficient evidence in the first instance to

charge the town where the insane resided or was found at the time of his arrest for the expenses of his examination and commitment, and to charge the state for the expenses of his support in the hospital, and the department shall charge to the state the reasonable expense of his support which shall be paid by the state.

If the inability to pay for support exists at the time of commitment, and said municipal officers fail to certify such fact, as required herein, the city or town making such commitment shall be liable for the support of said person until such certificate is furnished. (R. S. c. 23, § 136.)

History of section.—See Pittsfield v. Detroit, 53 Me. 442.

Sec. 136. Department may recover money improperly paid by state for support of insane.—The department may, in its discretion, investigate or cause to be investigated the allegations contained in any certificate provided for in the preceding section and if such investigation discloses the fact that any person was, or may be, lawfully liable for the support of the insane person mentioned in any such certificate, the department shall collect, by action in the name of the state, if necessary, all sums which have been paid by the state to the hospital for board of such insane person from the person lawfully liable as aforesaid to pay for the support of such insane person, and thereafter the state shall not be required to pay to said hospital the sum mentioned in said section so long as the liability of any person to support such insane person may lawfully exist. All moneys collected under the provisions of this section shall be forthwith turned over to the treasurer of state, who shall receipt for the same; and the expenses of the collection of said moneys shall be charged against and paid out of any sums so collected and turned over. (R. S. c. 23, § 137.)

Sec. 137. Liability of town where insane person resided, or was found.—The certificate of commitment to the hospital after a legal examination is sufficient evidence, in the first instance, to charge the town, where the insane resided or was found at the time of his arrest, for the expenses of his examination and commitment to the hospital; and when his friends or others file a bond with the treasurer of the hospital in which he is confined, the state shall not be liable for his support unless new action is had by reason of the inability of the patient or his friends longer to support him; and such action may be had in the same manner, and before the same tribunal, as if he had never been admitted to the hospital. (R. S. c. 23, § 138.)

Cited in Naples v. Raymond, 72 Me. 213; Gray v. Houlton, 63 Me. 566.

Sec. 138. Remedy of towns; bills chargeable to the state to be filed with department of finance and administration.—Any town thus made chargeable for the expenses of examination and commitment in the first instance, and paying for the examination of the insane and his commitment to a hospital, and any town made chargeable for the cost of maintaining an infirmary patient by virtue of the provisions of section 140, may recover the amount paid, from the insane, if able, or from persons legally liable for his support, or from the town where he has a legal settlement, as if incurred for the expense of a pauper, but if he has no legal settlement in the state, such expenses and such cost of maintenance shall be refunded by the state.

All bills for expenses so incurred and chargeable to the state shall be filed with the department of finance and administration within 3 months after the same are contracted, and no such bills shall be allowed, unless they are filed with the said department within 60 days after the 31st day of December of the year in which they are incurred. No insane person shall suffer any of the disabilities of pauperism nor be deemed a pauper, by reason of such support; but the time during which the insane person is so supported shall not be included in the period of

residence necessary to change his settlement. (R. S. c. 23, § 139. 1949, c. 241, § 1. 1953, c. 265, § 6.)

Cross reference.—See c. 94, §§ 3, 20, re pauper settlements and liability of kindred.

Section prospective.—There is no evidence in the terms of this section that it was intended to have a retroactive effect; and without such it must be considered as applicable to the future only. Glenburn v. Naples, 69 Me. 68.

Support not to be deemed pauper supplies.—"Such support" as used in the final sentence of this section clearly refers to that provided for in the preceding part of the section, to be recovered of the town wherein the insane person has his legal settlement, and the provision is as distinct as language can make it, that such support so rendered shall not make a pauper of the person receiving it; or, in other words, it is not to be deemed supplies received as a pauper. Glenburn v. Naples, 69 Me. 68.

And neither insane person nor spouse made pauper by support.—It is clear from this section that an insane wife cannot be made a pauper by such support, and if she cannot, her husband cannot be through her, and his residence in a town cannot thereby be interrupted. Glenburn v. Naples, 69 Me. 68.

But recovery is by the same process as for pauper supplies. — The process by which recovery is had is the same as in case of pauper supplies, but that is all. Bangor v. Wiscasset, 71 Me. 535.

The concluding phrase of this section might well be regarded as adopting the mode and condition of recovery provided in c. 94 in regard to paupers. Waldoboro v. Liberty, 94 Me. 472, 48 A. 186.

A town is not absolved of legal liability by reason of description of the insane person as a pauper in the notice given the town, when it is clear that the demand is for support in the hospital. Bangor v. Wiscasset, 71 Me. 535.

And compliance with that process is necessary to charge another town. — While this section is silent as to the requirements of any pauper notices, the entire scheme of the section is based upon the theory that the expenses and support incurred under it are in the nature of pauper suplies. Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

The proceedings under this section, with respect to expenses and support of a person committed to the asylum by the town committing and not the pauper residence of such person, comes within the purview of chapter 94 with reference to the notice required by one town to another in case of furnishing pauper supplies. That is, the plaintiff town is entitled to recover for expenses and support only three months prior to giving such notice. Rockport v. Searsmont, 101 Me. 257, 63 A. 820.

In Jay v. Carthage, 48 Me. 353, there is a dictum that to authorize recovery, written notice must first be given to the town in which the settlement is, analogous to the notice required under the pauper law, under which antecedent expenses for three months and subsequent expenses may be recovered, as provided in case of paupers. Waldoboro v. Liberty, 94 Me. 472, 48 A. 186.

An insane person may also be a pauper, although one, not otherwise in need of relief, incurs no pauper disabilities by reason of being committed to the hospital. Jay v. Carthage, 53 Me. 128.

It does not follow from this section that no insane person can be a pauper, nor even that pauperism may not result from insanity as it does sometimes from other diseases and misfortunes. The design of the section is to prevent any one from incurring pauper disabilities or being deemed a pauper from the naked fact that he is thus supported in the hospital upon a commitment by the selectmen. That is a calamity which might befall one who was in no sense destitute or in need of relief from public charity. That an insane person may also be a pauper, or a pauper become so insane that his comfort and safety and that of others in interest may be promoted by sending him to the insane hospital, are obvious facts. Naples v. Raymond, 72 Me. 213.

And town may have additional recovery in such cases.—Where an insane person is also a pauper, a town furnishing him with needed supplies may, in addition to the recovery herein allowed, have a recovery for those supplies from the town wherein such person has a settlement. (See c. 94, § 28). Jay v. Carthage, 53 Me. 128.

Kindred are primarily liable for support.—During his life, the husband of an insane woman is primarily liable for her support in the hospital. Bangor v. Wiscasset, 71 Me. 535.

The kindred of the insane person are the parties finally liable for his support under this section. Dexter v. Sangerville, 70 Me. 441.

Liability for support arises only if the commitment was in accordance with statute.—The right to recover for the sums

paid by the plaintiff town for the insane person's support in the insane hospital depends upon the proof offered to show a substantial compliance with the statute requirements touching the commitment of insane persons to the hospital by the municipal officers of the town where they are found. Naples v. Raymond, 72 Me. 213.

In the absence of any agreement on the husband's part, or any agency in her commitment, he can only be liable to the town which has paid the bill at the hospital, where the officers of the town have followed the statute in making the commitment. Kittery v. Dixon, 96 Me. 368, 52 A. 799.

And support was actually given. — A mere liability of the town to pay in the first instance, with right of recovery against those ultimately chargeable, is not support by the town. This right of action does not accrue till the sums due to the hospital are paid. Notice to the town where the settlement is, after the liability for hospital expenses has been incurred, but before their payment, is premature. Dexter v. Sangerville, 70 Me. 441.

Liability of patient depends on ability to pay.—The liability of the insane to pay for support in the hospital depends on ability. This section imposes the obligation to pay, "if able," otherwise there is no liability on the part of the insane. Bangor v. Wiscasset, 71 Me. 535.

If an ability to pay accrues during the time of his commitment, the insane person is liable for all expenses for support subsequently furnished. But no indebtedness on his part arises until such ability accrues. Bangor v. Wiscasset, 71 Me. 535.

The entire amount.—If the insane person is not able to pay the whole amount, he is not liable to pay any portion of it. Cape Elizabeth v. Lombard, 72 Me. 492.

Settlement may change during commitment.—Because of provisions concerning acquisition of pauper settlements (see c. 94, § 1), the settlement of an insane wife may be changed even while she is committed to a hospital through a change in the settlement of her husband. Bangor v. Wiscasset, 71 Me. 535.

The words "so supported" in the last sentence of this section mean supported at the hospital by the town. And if the insane person is supported from sources other than by the town the time during which he is committed to the hospital is to be included in the period of residence necessary to change his settlement. Dexter v. Sangerville, 70 Me. 441.

Burden of proof of settlement is on plaintiff town. — The burden of proof is upon the plaintiff town to establish the fact that the insane person had his settlement in the defendant town. Naples v. Raymond, 72 Me. 213.

Description of insane person in probate proceeding is not binding on actions under this section.—A city is not estopped to deny the insane person's settlement by reason of his description as an inhabitant of that city in the probate proceedings appointing his guardian. Bangor v. Wiscasset, 71 Me. 535.

Cited in Turner v. Lewiston, 135 Me. 430, 198 A. 734.

Sec. 139. Recovery by state.—The state may recover from the insane, if able, or from persons legally liable for his support, the reasonable expenses of his support in either insane hospital. (R. S. c. 23, § 140.)

Discharge of Patients.

Cross Reference.—See c. 10, § 22, sub-§ VIII, re construction of words "insane person" as applied to §§ 140-142.

Repealing law held unconstitutional. — Sections 140 to 142 were repealed by section 5, Chapter 374, Public Laws of 1951, and replaced by the provisions of that law. However, certain provisions of that law were held unconstitutional, and it was held that these sections are still in effect. See Appeal of Sleeper, 147 Me. 302, 87 A. (2d) 115.

Sec. 140. Discharge of patients from the insane hospitals; remedies for reimbursements.—Whenever in the judgment of the superintendent of either of the hospitals for the insane, any person, other than a person committed thereto as criminally insane, committed to and confined therein requires only infirmary care, he shall certify that fact to the municipal officers of the city or town from which such person was committed; and said municipal officers shall forthwith remove such person or cause such person to be removed from said hospital and taken to said city or town. If said municipal officers to whom such certifica-

tion is made as aforesaid fail to remove such person from said hospital within 1 week after receipt of such certification, the city or town from which such person was committed shall be liable to the state for the entire cost of maintaining such person in said hospital, at a rate determined by the commissioner, from the date of the certification as aforesaid until finally removed therefrom, the same to be recovered in an action on the case. This section shall not apply to towns having less than 200 inhabitants. (R. S. c. 23, § 141. 1949, c. 241, § 2.)

Sec. 141. Superintendent may permit inmate to temporarily leave institution. — The superintendent of either hospital may permit any inmate thereof to leave such institution, temporarily, in charge of his guardian, relatives, friends, or by himself, for a period not exceeding 6 months, and may receive him when returned by any such guardian, relatives, friends, or upon his own application, within such period, without any further order of commitment, and the liability of the state, or of any person by bond given for the care, support and treatment of such insane person as originally committed, shall remain in full force and unimpaired upon the return of such person as if he had remained continuously in such hospital. The superintendent of either hospital with the approval of the department may on receipt of formal application in writing before the date of expiration of such leave of absence grant an extension of time for another 6 months. (R. S. c. 23, § 142.)

Degree of care to be exercised in granting leave to be commensurate with nature of patient's affliction.—Reason and good sense demand that such permission should not be given if the safety and welfare of the patient, or the community at large, are to be jeopardized by such permission. The degree of care to be exercised in giving such permission should be commensurate with the particular nature of the patient's mental affliction and the possible or proportionate risk consequent upon his enlargement. Failure to exercise this degree of care constitutes actionable negligence on the part of the superintendent. Jones Co. v. State, 122 Me. 214, 119 A. 577.

Sec. 142. Discharge of patients.—The department shall make a particular examination into the condition of each patient in the state hospitals, including patients committed while under sentence in the state prison or any of the county jails, at least once a year. The department may discharge anyone so far restored that his comfort and safety, and that of the public, no longer require his confinement; except in such cases where the patient has been transferred to said hospital from some penal or correctional institution, and the original sentence under which he or she was committed to such institution has not expired; in which cases the patient shall be returned to that institution to serve the remainder of the sentence according to the provisions of the law; and it may transfer to the care and custody of his relatives and friends applying therefor, on conditions to be fixed by the superintendent and department, any such patient not held under sentence whom it is satisfied will be properly cared for by the person making such application. (R. S. c. 23, § 143.)

Pownal State School.

Cross Reference.—See c. 10, § 22, sub-§ VIII, re construction of words "insane person" as applied to §§ 143-147.

Sec. 143. Management; ages of inmates.—The Pownal state school, heretofore established at Pownal, in the county of Cumberland, shall be maintained for the care and education of idiotic and feeble-minded males and females, between the ages of 5 years and 55 years, except that idiotic and feeble-minded state paupers or patients transferred from either state hospital for the insane under the provisions of this chapter may be admitted after the above stated age. (R. S. c. 23, § 152. 1951, c. 84, § 3.)

See c. 146, § 6, re powers of the court.

Sec. 144. Payment for support of inmates; recovery of expenses. —All indigent and destitute persons in this state, who are proper subjects for said school and have no parents, kinsmen or guardian able to provide for them, may be admitted as state charges and all other persons in this state, who are proper subjects for said school, when parents, kinsmen or guardian bound by the law to support such persons are able to pay, shall pay such sum for care, education and maintenance of such persons as the department shall determine, and such persons from other states having no such institution or similar school may be received into such school when there is room for them without excluding state charges, at a cost to such person or those who are legally responsible for their maintenance, of not less than $3.25 per week; and the state may recover from any person admitted to said school, if able, or from persons legally liable for his support, the reasonable expenses of his support in said school. (R. S. c. 23, § 153.)

Sec. 145. Judge of probate may commit.—Whenever it is made to appear, upon application to the judge of probate for any county and after due notice and hearing, that any person resident in said county, or any inmate of the state school for girls, the state school for boys, the reformatory for men, the reformatory for women, the state prison, the military and naval children's home, or any person supported by any town, is a fit subject for the Pownal state school, such judge may commit such person to said school by an order of commitment directed to the department accompanied by a certificate of 2 physicians who are graduates of some legally organized medical college and have practiced 3 years in this state, that such a person is a proper subject for said institution; provided no such order of commitment shall issue until an application for admission of such person has first been made to the department which shall be placed on file at the institution and evidence thereof presented to such judge, accompanied by a certificate of the superintendent, stating, in substance, that such person will be received under the provisions of section 147, when properly committed. Whenever, upon such application, there is occasion for the judge of probate to attend a hearing on days other than days fixed as the regular day for holding the probate court, said judge of probate shall be allowed $5 per day for his services and expenses, which shall be paid by the county treasurer upon the certificate of the county commissioners. (R. S. c. 23, § 154. 1951, c. 196, § 3.)

Sec. 146. Appeal from order of committal; discharge of inmates.— Any order of committal under the provisions of the preceding section shall be subject to appeal in the same manner, by the same persons, and to the same extent that decrees of the judge of probate appointing guardians over persons alleged to be insane or incompetent or spendthrift, and no committal under said section shall bar habeas corpus proceedings, but the court upon habeas corpus proceedings may confirm the order of commitment whenever justice requires. Any inmate of the school may be discharged by the department or by a justice of the superior court, whenever a further detention in such school in their opinion is unnecessary; but any person so discharged who was under sentence of imprisonment at the time of his commitment, the period of which shall not have expired, shall be committed or remanded to prison for such unexpired time.

Whenever in the opinion of the superintendent the condition of an inmate is such that he may safely be permitted to leave the institution temporarily, the superintendent shall have authority to grant such permit for a definite time under such conditions as he may specify, which permit may at any time be revoked or extended; provided, however, that no such inmate shall be allowed to leave the institution temporarily until an agreement has been procured by the superintendent from some responsible person or persons to provide such inmate with proper care during his period of temporary absence from the institution. In the event that any such inmate should fail to return to the institution at the time required by the superintendent, full power to retake and return such inmate is

expressly conferred upon the superintendent, whose written order shall be a sufficient warrant authorizing any officer named therein to return such inmate to the institution. (R. S. c. 23, § 155.)

Sec. 147. Order of admittance. — The order of admittance of feeble-minded persons to the institution shall be determined by the department. (R. S. c. 23, § 156.)

Sec. 148. Specialists for temporary patients; bureau for community service.—In every state institution, to which an insane, feeble-minded or epileptic person may be committed, the department shall appoint a physician experienced in the care and treatment of such persons, also the necessary assistants to such physician, and shall organize and administer under his direction a bureau for community service in the district served by the institution. The duties of said bureau shall be:

I. The supervision of patients who have left the institution with a view to their safe care at home, suitable employment and self-support under good working and living conditions, and prevention of their relapse and return to public dependency.

II. Provision for informing and advising any indigent person, his relatives or friends, and the representatives of any charitable agency as to the mental condition of any indigent person, as to the prevention and treatment of such condition, as to the available institutions or other means of caring for the person so afflicted and as to any other matter relative to the welfare of such person.

III. Whenever it is deemed advisable the superintendent of the institution may cooperate with state departments to examine upon request and recommend suitable treatment and supervision for:

A. Persons thought to be afflicted with mental or nervous disorder.

B. School children who are nervous, psychopathic, retarded, defective or incorrigible.

C. Children brought before any juvenile court.

IV. The acquisition and dissemination of knowledge of mental disease, feeble-mindedness, epilepsy and allied conditions, with a view to promoting a better understanding and the most enlightened public sentiment and policy in such matters. In this work the bureau may cooperate with local authorities, schools and social agencies. (R. S. c. 23, § 157.)

Sterilization in Certain Cases.

Sec. 149. Sterilization to prevent reproduction of feeble-mindedness or in treatment of mental disease; consent necessary; procedure prior to operation.—The operations of vasectomy and fallectomy may be performed under the conditions and within the restrictions herein described, and under such provisions shall be lawful.

When either of the recognized sterilizing operations herein referred to may be indicated for the prevention of the reproduction of further feeble-mindedness, or for the therapeutic treatment of certain forms of mental disease, physicians may recommend to the nearest relative, guardian and affected individual the advisability and necessity of such operation; and when the written consent of the patient, when mentally competent to give such consent or the written consent of the nearest relative or guardian when the patient is mentally incompetent to give such consent, is given, the physician shall call a council of 2 registered medical practitioners—one a physician and one a surgeon—of not less than 5 years' practice and not related to the patient, whose duty it shall be in conjunction with the

physician in charge of the case, to examine the individual recommended for operation. Whether the person to be operated upon is mentally capable of giving his consent shall be decided by the consultants and stated in writing, with their reasons therefor, and such written statement shall be kept on file at the Pownal state school and in case they find that the patient is mentally incapable of giving his consent, the consent of the nearest relative or guardian must be secured. If in the judgment of the consulting physicians the operation will prevent the further propagation of mental deficiency, or if in the judgment of the medical consultants the physical or mental condition of any such person will be substantially benefited thereby, then the consultants shall select a competent surgeon to perform the operation of fallectomy or vasectomy, as the case may be, upon such person, and such surgeon may be the consulting surgeon. (R. S. c. 23, § 158.)

Sec. 150. Recommendation for sterilization in certain cases. — Whenever it appears to the medical staff or institution physician of any institution in this state which has the care or custody of insane or feeble-minded persons that any inmate under the care or custody of such institution would be likely, if released without sterilization, to produce a child or children who by reason of inheritance would have a tendency to serious mental disease or mental deficiency, said medical staff or institution physician shall submit to the department a recommendation that a surgical operation be performed upon said patient for the prevention of parenthood. This recommendation shall be in writing and accompanied by the sworn statement of the superintendent of such institution containing the history of the inmate as shown by the records of the institution, so far as it bears upon the recommendation for sterilization and setting forth the reasons why sterilization is recommended. (R. S. c. 23, § 159.)

Sec. 151. Written order for sterilization.—If, in the judgment of the department, procreation by said inmate would be likely to produce a child or children who by reason of inheritance would have a tendency to serious mental deficiency, it shall be the duty of the department to approve said recommendation within 30 days and send to the superintendent of such institution a written order, signed by the commissioner directing him to proceed with the sterilization not earlier than 50 days after the receipt of said order; provided, however, that no order of sterilization shall be carried into effect until the same shall have been further approved by two of the following persons: the superintendent of the Bangor state hospital, the superintendent of the Augusta state hospital, and the superintendent of the Pownal state school for the feeble-minded. (R. S. c. 23, § 160.)

Sec. 152. Notice given.—Such department shall also send one copy of the order for sterilization to the inmate and another copy to the father or mother, husband or wife, or legal guardian of the inmate, accompanying it in each case by a certified copy of the recommendation aforesaid and notification that the inmate or his or her representative has a right of appeal to the courts. If none of the foregoing relatives are known and no legal guardian has been appointed, the department shall request a judge of the superior court to appoint some attorney to protect the rights of the inmate and such notices and copies shall be sent to such attorney. (R. S. c. 23, § 161.)

Sec. 153. Appeal from order for sterilization.—Within 30 days of the issuance of any order of sterilization an appeal may be taken therefrom to the superior court by the inmate or his or her representative. Such appeal shall be entered and heard at the next term of said court held at least 14 days after the date of such appeal in the county where inmate was domiciled when committed. The proceedings in such appeals shall be governed by the rules provided for probate appeals.

In this appeal the person for whom an order of sterilization has been issued

shall be designated as the plaintiff and the superintendent of the institution in which said inmate is under care or custody shall be designated as defendant. The finding of the court shall be certified to the department. Such finding may affirm, revise or reverse the order of the board appealed from. (R. S. c. 23, § 162.)

Sec. 154. Proceedings stayed pending appeal; how order carried out.—The pendency of any appeal shall stay proceedings under the order of such department until the appeal be determined. Should the decision of the court uphold the plaintiff's objection, the order for sterilization shall be vacated automatically and the case may not be initiated again within 1 year of the date of the final decision of the court. Should the court find against the plaintiff said order shall be put into effect by the superintendent of the institution in which the inmate is under care or custody and the inmate shall be sterilized by vasectomy, if a male; by a fallectomy, if a female. (R. S. c. 23, § 163.)

Sec. 155. Permanent record; inspection. — The completed original documents in every case not originated and completed at the Pownal state school shall be forwarded to said school for permanent record and a duplicate thereof shall be retained by the institution where the inmate was confined. Such records or documents shall not be open to public inspection, except for such purposes as may be approved by the superintendent of the Pownal state school and the commissioner, with the assurance that the names of the persons sterilized shall not be made public. (R. S. c. 23, § 164.)

Sec. 156. Liability of persons executing the provisions of §§ 149-156.—Neither any of said superintendents nor any other person legally participating in the execution of the provisions of sections 149-156, inclusive, shall be liable either civilly or criminally on account of said participation, except in the case of negligence in the performance of the operation. (R. S. c. 23, § 165.)

State Sanatoriums for Treatment of Tuberculosis.

Sec. 157. Establishment and maintenance of one or more sanatoriums.—The state shall maintain by building, lease or by purchase one or more sanatoriums in such districts of the state as shall seem best to serve the needs of the people for the care and treatment of persons affected with tuberculosis. Where lease or purchase is made, the state shall have the right to enlarge or otherwise adapt the property to meet the needs of the situation; and such additions or improvements shall be considered permanent. At the expiration of the original lease of any property for use as a tuberculosis sanatorium, the state shall have the right of renewal or of purchase. (R. S. c. 23, § 166.)

Cited in Bancroft v. Maine Sanatorium Ass'n, 119 Me. 56, 109 A. 585.

Sec. 158. Admittance of patients; charges for treatment. — Residents of the state may be admitted to these sanatoriums, if found by any regular practising physician in the state or by the superintendent of any one of the sanatoriums to be suffering from tuberculosis. All patients in said sanatoriums, or relatives liable by law for their support, shall pay to the state for treatment, including board, supplies and incidentals, the amount determined by the department; provided that the department may, after proper investigation of the financial circumstances of the patient, or relatives liable by law for his or her support, if it finds that such patient or relatives are unable to pay the amount determined as above, in whole or in part, waive such payment or so much thereof as the circumstances appear to warrant; provided further, that if such patient or relatives are unable to pay, the city, town or plantation in which the patient has a settlement, if any, shall pay to the institution the sum of $2 per week so long as the patient remains therein.

All funds collected from this source shall be credited to the general fund. No pauper disabilities shall be created by reason of any aid or assistance given under the provisions of this section.

The provisions of this section shall not apply to persons who may be committed under the provisions of section 105 of chapter 25. (R. S. c. 23, § 167. 1945, c. 297, § 3. 1949, c. 208, § 2.)

Maine School for the Deaf.

Sec. 159. Purpose.—Maine School for the Deaf, established by chapter 446 of the private and special laws of 1897, is to be devoted to the education and instruction of deaf and dumb children. (R. S. c. 23, § 168.)

Sec. 160. State to assume charge and expenses; government. — Said school shall be located in the county of Cumberland, and the state shall have the entire charge, responsibility and expense of maintaining said school. The government of said school is vested in the department. (R. S. c. 23, § 169. P. & S. L. 1953, c. 100.)

History of section.—See Opinion of the Justices, 72 Me. 542, 553.

Sec. 161. Powers and duties of department.—The department shall have charge of the general interests of said school and see that its affairs are conducted in accordance with law. It may employ officers, teachers and other employees as it may deem advisable, subject to the provisions of the personnel law; it may from time to time prescribe the system of education and course of study to be pursued in the school. (R. S. c. 23, § 170. 1953, c. 308, § 29.)

Sec. 162. Admittance of children to school.—With the consent of its parent or guardian, the department may admit to said school for a term not exceeding 16 years, any deaf and dumb child residing in this state and not less than 2 years of age, and the sums necessary for the support and instruction of such children while attending said school shall be paid by the state. (R. S. c. 23, § 171. 1953, c. 332.)

Sec. 163. Deaf or dumb children between ages of 6 and 18 to be sent to Maine School for Deaf.—Every parent, guardian or other person having control of any mentally normal child between 6 and 18 years of age, too deaf or too dumb to be materially benefited by the methods of instruction in vogue in the public schools, unless it can be shown that the child is receiving regular instruction during the same period in studies usually taught in the public schools, shall be required to send such child or youth to the Maine School for the Deaf during the scholastic year of that school. Such child or youth shall attend such school, year after year, until discharged by the superintendent upon approval of the department. (R. S. c. 23, § 172. P. & S. L. 1953, c. 100.)

Sec. 164. Costs.—For each child admitted to the school, the town in which the child is a school resident at the time of admission shall pay to the state, to be credited to the general fund, an amount equal to the per capita cost of instruction and equipment in a public elementary school for a normal child in that town. (1951, c. 56. 1953, c. 195.)

Sec. 165. Admittance of children from other states.—Deaf and dumb children residing in other states may, at the discretion of the department, be admitted to said school upon the payment by their parents, guardian or other responsible agency of a reasonable compensation to be fixed by the department. All income from this or any other source shall be paid to the treasurer of state and shall be added to the appropriation for the maintenance of said school. (R. S. c. 23, § 173.)

State Military and Naval Children's Home.

Sec. 166. Bath Military and Naval Children's Home declared a state institution; purposes.—The State Military and Naval Children's Home, established as the Bath Military and Naval Orphan Asylum at Bath by chapter 163 of the private and special laws of 1866, is declared to be a state institution, the purpose of which is the rearing and educating gratuitously, in the common branches of learning and ordinary industrial pursuits of the poor and neglected children of this state, preference being given to the children of soldiers and sailors of Maine who have served in the various wars in which the United States has engaged. (R. S. c. 23, § 174.)

Sec. 167. Guardianship.—The department shall have charge of the affairs of said home. Its head shall be called the superintendent. The commissioner and the superintendent shall act as a board of guardians of all the children who are members of said home and shall have all the power and authority granted by law to guardians. (R. S. c. 23, § 175.)