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by the proper state official, the attorney general may act as follows. He may file a petition in the superior court of the county where the prisoner was tried and convicted in term time or with any justice of said court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the superior court of conviction or any justice thereof in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of said court and shall set the prisoner down for trial if in term time or bind him over to the next criminal term in said county if in vacation, after setting his bail. If the sentence only is erroneous, the superior court of the county of conviction in term time or any justice thereof in vacation, on presentation of the attorney general's petition as aforesaid, shall recall the erroneous sentence and order it stricken from the records and shall in term time or in vacation sentence the prisoner anew in accordance with the indictment against said prisoner. (1955, c. 121.)

Chapter 149.

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

Sections 38-A to 38-B. Mental Responsibility for Criminal Conduct.

Sentences and Imposition.

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

The court shall rule, and in appropriate cases shall endorse, on the mittimus, that the terms of imprisonment shall be served concurrently or consecutively; or in the event of sentences by payment of a fine, that the commitment for the nonpayment thereof under section 42 be served concurrently or consecutively. In the event the court fails so to rule or endorse, said sentences shall be served concurrently. The provisions of this paragraph shall likewise apply to sentences by payment of a fine and sentences by imprisonment for separate offenses. (R. S. c. 136, § 1. 1957, c. 334, § 14; c. 387, § 19; c. 429, § 87. 1961, c. 242.)

Effect of amendments.—The first 1957 amendment inserted the exception at the end of the first clause of the present second sentence and inserted the words "except before trial justice and municipal courts" in the last clause of said second sentence. The second 1957 amendment deleted the former second and third sentences. The first 1957 amendment had made a slight change in the former third sentence. The third 1957 amendment referred to both prior 1957 amendments and again deleted the former third sentence.

The 1961 amendment added the second paragraph.

Applied in State v. Blanchard, 156 Me. 30, 159 A. (2d) 304.

Sec. 1-A. Prior convictions alleged separately; subsequent arraignment.—In all cases where prior conviction for an identical offense or any other offense affects the sentence which the court may impose in a current principal offense, such prior conviction shall not be alleged in the complaint, information or indictment alleging such principal offense, but shall be alleged in a separate complaint, information or indictment, ancillary to the principal offense, upon

which the respondent shall not be arraigned until such time as the respondent has been convicted of the principal offense. (1961, c. 268, § 1.)

Sec. 3. Punishment when convict previously sentenced to any state prison.—When a person is convicted of a crime punishable by imprisonment in the state prison, and it is alleged and proved in a trial, or admitted in a trial, that he had been before convicted and sentenced to any state prison by any court of this state, or of any other state, or of the United States, unless pardoned therefor, he may be punished by imprisonment in the state prison for any term of years. Allegation of such prior conviction and sentence shall be by indictment separately found, and upon which the defendant shall not be arraigned until after such time as he shall have been convicted upon the current principal offense. (R. S. c. 136, § 3. 1961, c. 268, § 2.)

Effect of amendment.—The 1961 amendment deleted "in the indictment", substituted "in a trial, or admitted in a" for "or admitted on", substituted "unless pardoned therefor" for "whether pardoned therefor or not" and added the second sentence.

Description of record of prior conviction.—In order to properly prepare his defense, the accused is entitled to that degree of strictness in description of the record of prior conviction that will inform him of the particular record to be used as evidence. State v. Mottram, 155 Me. 394, 156 A. (2d) 383.

Identity of person named in record and prisoner must be shown.—It is not sufficient to merely introduce the record of a person bearing the same name as the defendant. The identity of the person named in the record and the prisoner must be shown. State v. Mottram, 155 Me. 394, 156 A. (2d) 383, citing State v. Beaudoin, 131 Me. 31, 158 A. (2d) 863.

Prosecutions for taking indecent liberties.—Defendant, who pleaded guilty to an indictment in two counts charging the offense of taking indecent liberties on June 20, 1945, and the conviction and sentence for a prior similar offense in 1936, was properly sentenced for 20 years pursuant to provisions of this section, since the provisions of § 11 of this chapter requiring sentence for minimum and maximum terms did not apply to prosecutions under ch. 134, § 6 for taking of indecent liberties (ch. 149, § 12). Carr v. State, 151 Me. 226, 117 A. (2d) 63.

Applied in State v. Small, 156 Me. 10, 157 A. (2d) 874.

Sentences to State Prison.

Sec. 11. Maximum and minimum terms.—When any person shall be convicted of crime, the punishment for which prescribed by law may be imprisonment in the state prison, the court imposing sentence shall not fix a definite term in said state prison but shall fix maximum and minimum terms. The maximum sentence shall not exceed the longest term fixed by law for the punishment of the offense of which the person sentenced is convicted, and the minimum sentence shall not exceed ½ of the maximum term of imprisonment fixed by statute. For the purpose of aiding in post conviction review of the sentence imposed, the justice presiding shall record as part of the case the facts acquired and considered by him in imposing sentence. (R. S. c. 136, § 11. 1951, c. 92. 1957, c. 253. 1959, c. 191. 1961, c. 90.)

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

The 1959 amendment added a new sentence at the end of this section.

The 1961 amendment rewrote the present last sentence, which formerly provided for ascertaining facts as to the criminal character or conduct of the prisoner, to be entered on the minutes.

Prosecutions for taking indecent liberties.—Defendant, who pleaded guilty to an indictment in two counts charging the offense of taking indecent liberties on June 20, 1945, and the conviction and sentence for a prior similar offense in 1936, was properly sentenced for 20 years pursuant to provisions of § 3 of this chapter, since provisions of this section requiring sentence for minimum and maximum terms did not apply to prosecutions under ch. 134, § 6 for taking of indecent liberties (ch. 149, § 12). Carr v. State, 151 Me. 226, 117 A. (2d) 63.

Sec. 12. Repealed by Public Laws 1957, c. 387, § 20.

Sec. 13. Record forwarded to warden. — Whenever a person shall be convicted of a crime and sentenced to imprisonment, the clerk of the court shall make and forward to the warden of the prison a record containing a copy of the information or complaint, the sentence pronounced by the court, the name and residence of the judge presiding at the trial, prosecuting attorney and sheriff, and the names and post-office addresses of the jurors and the witnesses sworn on the trial, together with a statement of any fact or facts which the presiding judge may deem important or necessary for a full comprehension of the case, and a reference to the statute under which the sentence was imposed. Such record shall be delivered to the warden at the time the prisoner is received into the prison. Prisoners shall not be received until a copy of the record forwarded to the warden and a warrant of commitment is given to the receiving officer at the state prison. (R. S. c. 136, § 13. 1955, c. 176, § 2.)

Effect of amendment.—The 1955 amendment deleted the words "pursuant to the provisions of sections 11 to 22, inclusive" formerly appearing after the word "imprisonment" in line two. It also added the last sentence.

Secs. 14-16. Repealed by Public Laws 1957, c. 387, § 20.

Sec. 17. Discharged prisoners, record forwarded to state police. —Whenever any prisoner, 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 discharged in full execution of his sentence, the warden of the prison shall make and forward to the state police a copy of the prison record of said prisoner together with a statement of any fact or facts which he may deem necessary for a full comprehension of the case. (1949, c. 138. 1957, c. 387, § 21.)

Effect of amendment. — The 1957 amendment deleted "released upon parole, or" which formerly appeared preceding the word "discharged".

Secs. 18-23. Repealed by Public Laws, 1957, c. 387, § 22.

Probation.

Secs. 24-38. Repealed by Public Laws 1957, c. 387, § 22; c. 429, § 88.

Cross reference. — For present probation and parole law, see c. 27-A.

Editor's note.—Former § 24, which was first repealed by P. L. 1957, c. 387, § 22, approved May 29, 1957, was also amended by P. L. 1957, c. 265, approved May 10, 1957, and by P. L. 1957, c. 416, § 6, approved May 29, 1957. The section was again repealed by P. L. 1957, c. 429, § 88, effective on its approval, October 31, 1957.

Mental Responsibility for Criminal Conduct.

Sec. 38-A. Not responsible for criminal act produced by mental disease or defect.—An accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. The terms "mental disease" or "mental defect" do not include an abnormality manifested only by repeated criminal conduct or excessive use of drugs or alcohol. (1961, c. 310.)

Sec. 38-B. Commitment of person acquitted on basis of mental disease or defect.—When the respondent is acquitted on the ground of mental disease or mental defect excluding responsibility, the verdict and the judgment shall so state and the court shall order him to be committed to the custody of the commissioner of mental health and corrections to be placed in an appropriate institution for the mentally ill for custody, care and treatment. (1961, c. 310.)

Execution of Sentences.

Sec. 41. Removal of convicts to state prison; clothing for convict.—When a convict is sentenced to confinement in the state prison, such clerk of courts shall make out a warrant under seal of the court, directed to the sheriff of said county, requiring him to cause such convict, without needless delay, to be removed from the county jail to the state prison; all sheriffs and jailkeepers shall strictly obey its directions; and the clerk, as soon as may be, shall deliver such warrant to the sheriff of the county, and he shall forthwith deliver it and the convict to said warden. The sheriff shall provide the convict with comfortable clothing in which to be removed to the state prison. (R. S. c. 136, § 45. 1955, c. 405, § 52.)

Effect of amendment.—The 1955 amendment substituted "sheriff of said county" for "warden of the prison" in the first sentence. It also deleted the words "the warden and" before the words "all sheriffs" near the middle of the first sentence, and inserted the words "and the convict" near the end of the first sentence.

Convicts.

Sec. 42. Convict, unable to pay fine or costs, liberated.—Except when otherwise expressly provided, any convict sentenced to pay a fine or costs or both and committed for default thereof and for no other cause shall be given a credit of $1 on such fine or costs or both for each day during which he shall be confined and shall be discharged at such time as the said credits or such credits as have been given and money paid in addition thereto shall equal the amount of the fine or costs or both, but no convict shall serve more than 11 months to discharge his liability under any single fine or costs or both, and in such case no further action shall be taken to enforce payment of said fine or costs or both. (1957, c. 439, § 1.)

Editor's note.—Section 42, which was repealed by P. L. 1957, c. 254, § 1, was reenacted by P. L. 1957, c. 439, § 1. Former § 42 authorized, but did not require, liberation upon the giving of a note for the amount due, accompanied by a written schedule of property.

P. L. 1957, c. 439, § 2, provides as follows:

"Sec. 2. Application. The benefits of section 42 of chapter 149 of the Revised Statutes shall apply to all persons committed for nonpayment of fines or costs or both on and after August 28, 1957, and any confinement between the effective date of this action and August 28, 1957, shall be computed in determining the eligibility of any convict now detained to be liberated."

Secs. 43, 44. Repealed by Public Laws 1957, c. 254, § 1.

Pardons and Commutations of Sentences.

Sec. 45. Notice to county attorney and attorney general, on all petitions for pardon and commutation of sentences.—On all petitions to the governor for pardon or commutation of sentences, written notice thereof shall be given to the attorney general and the county attorney for the county where the case was tried at least 4 weeks before the time of the hearing thereon, and 4 weeks' notice in some newspaper printed and published in said county. If the crime for which said pardon is asked or for which commutation of sentence is sought is punishable by imprisonment in the state prison, the attorney general or the county attorney for the county where the case was tried shall, upon the request of the governor and council, attend the meeting of the governor and council at which the petition is to be heard, and the governor and council shall allow said county attorney his necessary expenses for such attendance and a reasonable compensation for said county attorney's services to be paid from the state treasury out of the appropriation for costs in criminal prosecutions. The governor and council may require the judge and prosecuting officer who tried the case to furnish them a concise statement thereof as proved at the trial and

any other facts bearing on the propriety of granting pardon or commutation. (R. S. c. 136, § 49. 1961, c. 30.)

Effect of amendment.—The 1961 amendment divided the former first sentence into two sentences, added "attorney general and the" near the beginning of the present first sentence, substituted "4" for "3" in two places in that sentence, added "or for which commutation of sentence is sought" and "the attorney general or" in the present second sentence and substituted "said county attorney" and "said county attorney's" for "him" and "his" near the end of that sentence.

Chapter 149-A.

Uniform Interstate Compact on Juveniles.

Secs. 1, 2. Repealed by Public Laws 1957, c. 387, § 23.

Cross reference.—For present provisions as to interstate compact on juveniles, see c. 27-A, § 22.

Chapter 150.

Collection and Disposal of Fines and Costs in Criminal Cases.

Duty of Trial Justices and Judges of Municipal Courts.

Sec. 5. All fines, costs and forfeitures paid to county treasurer.—Every clerk of a superior court, trial justice and judge or recorder of a municipal court shall render, under oath, a detailed account of all fines, costs and forfeitures upon convictions and sentences before him, on forms prescribed by the state department of audit, and shall pay them into the treasury of the county where the offense is prosecuted on or before the 15th day of the month following the collection of such fines, costs and forfeitures. The county treasurer, upon approval of the county commissioners, shall pay to the state, town, city or persons any portion of the fines, costs and forfeitures that may be due. Any person who fails to make such payments into the county treasury shall forfeit, in each instance, double the amount so neglected to be paid over, to be recovered by indictment for the persons entitled to such fines, costs and forfeitures, and in default of payment, according to the sentence of the court, such person shall be punished by imprisonment for not more than 6 months. (R. S. c. 137, § 5. 1957, c. 334, § 15.)

Effect of amendment. — The 1957 amendment deleted the former second sentence which read "A certified bill of costs for each case heard in a municipal or trial justice court shall accompany such remittance."

Sec. 6. Magistrates to give bond for faithful performance of duties; acting without bond.—Every trial justice or judge of a municipal court, before he performs any official act as such justice or judge pertaining to any criminal process or proceeding, shall give bond to the county in such sum and with such sureties as the county commissioners of said county shall approve, conditioned that he will, during his continuance in office, faithfully perform, as the law requires, all his duties relating to the collection and payment over of all fines and forfeitures which may come into his hands by virtue of his office. Such bond shall be held by the county treasurer and enforced for the security of any and all parties entitled to such fines and forfeitures, and an action on such bond for the benefit of one party shall not bar an action thereon for the benefit of any other party. Every such justice or judge who shall perform any such official acts before giving such bond forfeits not more than $100, to be recovered by