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Sec. 33. Detention at state prison of certain prisoners. — When a verdict of guilty is rendered against any person for an offense punishable by imprisonment in the state prison, and such person is committed to jail pending decision by the supreme judicial court on exceptions, report, motion in arrest of judgment, writ of error, appeal or otherwise, or is committed to jail to await action of a grand jury after a finding of probable cause, the sheriff of the county in which such person is committed to jail may certify, in writing, to any justice of the superior or supreme judicial court, in term time or in vacation, that in his opinion such person is dangerous and liable to attempt to escape from such jail; thereupon such justice may order, after hearing, that said person be transferred and committed to the state prison for safekeeping to await the final decision from the supreme judicial court. The county committing such person to the state prison for safekeeping shall be liable to the state for each such person, a proportional amount of the over-all inmate per capita cost per day based on previous year. (R. S. c. 135, § 33. 1955, c. 247.)

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

State Jurisdiction after Federal Court Disposition.

Sec. 34. Court action after federal court has acted.—Whenever any federal court finds that a prisoner in any penal institution in this state has been deprived of any of the rights guaranteed to him by the constitution of the United States before, at or after his trial, so that the judgment or sentence or both are erroneous and said court holds the case on its docket pending corrective action by the proper state official, the attorney general may act as follows. He may file a petition in the superior court of the county where the prisoner was tried and convicted in term time or with any justice of said court in vacation, setting forth the petition of the prisoner to the federal court and the decision of that court, and the superior court of conviction or any justice thereof in vacation shall then recall the judgment and sentence held erroneous and order it stricken from the records of said court and shall set the prisoner down for trial if in term time or bind him over to the next criminal term in said county if in vacation, after setting his bail. If the sentence only is erroneous, the superior court of the county of conviction in term time or any justice thereof in vacation, on presentation of the attorney general's petition as aforesaid, shall recall the erroneous sentence and order it stricken from the records and shall in term time or in vacation sentence the prisoner anew in accordance with the indictment against said prisoner. (1955, c. 121.)

Chapter 149.

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

Sections 17-A to 17-D. Mental Responsibility for Criminal Conduct.
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 the district court in which court he may be sentenced to pay a fine sufficient to cover said costs as provided in chapter 146, section 2-A; and except

before a district court, for violations of chapter 61, sections 66, 68, 84 and 89, and chapter 100, sections 145 to 152, 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. 1963, c. 402, § 252.)

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.

The 1963 amendment substituted "the district court" for "a municipal or trial justice court" near the beginning of the last sentence of the first paragraph, substituted "court" for "courts" and "a district court" for "trial justice and municipal courts" near the middle of that sentence and made changes in the cross references therein.

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

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. 2. General penalty.

Quoted in Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

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.

Prior conviction must be alleged, etc.

The state must maintain its burden of proving beyond a reasonable doubt that the defendant has been previously convicted within the meaning of this section. State v. Mottram, 158 Me. 325, 184 A. (2d) 225.

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.

Burden on defendant to show case is on appeal. — When the state has offered credible proof of the conviction of a defendant, thus establishing a prima facie case, the burden shifts to the defendant to go forward with evidence to show that the case is on appeal. It is not necessary for the state to deny the possibility of an appeal. State v. Mottram, 158 Me. 325, 184 A. (2d) 225.

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.

Quoted in Austin v. State, 158 Me. 292, 183 A. (2d) 515.

Sec. 7. Courts may sentence to any work-jail, nearest to county where offense committed; prison sentences include labor.—The superior court and the district court, in the county where a work-jail is situated or in any county where there is no work-jail may, subject to section 8, sentence any person convicted of an offense punishable by imprisonment to any of the work-jails nearest or most convenient to the county where the offense is committed, and all sentences of imprisonment shall include labor. The keeper of such work-jail shall receive and detain such prisoner in the same manner as if committed by a court sitting in the county where such work-jail is situated. Any officer of any county qualified to serve criminal precepts in his county may serve any precept required by this and the preceding section, whether such service is performed in whole or in part in one or more counties, and processes shall be issued and directed accordingly. (R. S. c. 136, § 7. 1963, c. 402, § 253.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "any municipal court or trial justice" near the beginning of the first sentence and substituted "section 8" for "the provisions of the following section" near the middle of that sentence.

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

Sec. 8. Commitment in county where convicted.—Any person sentenced by the district court to a term of imprisonment in a jail, not exceeding 4 months, shall be committed to the jail in the county in which such person is convicted, provided such county has a suitable jail, otherwise such commitment may be to any jail in the state. (R. S. c. 136, § 8. 1963, c. 402, § 254.)

Effect of amendment.—The 1963 amendment substituted "the district court" for "any trial justice or judge of any municipal court."

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

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.

Cited in Austin v. State, 158 Me. 292, 183 A. (2d) 515.

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.

Design of section.—This section is designed to aid in the administration and government of the prison. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

The mittimus is not the judgment. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 82 S. Ct. 129, 9 L. Ed. (2d) 104.

It issues as a ministerial act designed to place in the warden's hands an authorization to hold the person convicted and sentenced. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

Without which imprisonment is nontheless lawful. — If a prisoner duly convicted and sentenced is in fact received without the delivery of the mittimus and other records, the imprisonment is nonetheless lawful. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

And an error therein may be corrected to comply with the judgment. Duncan v. State, 158 Me. 265, 183 A. (2d) 209, cert. den. 371 U. S. 867, 83 S. Ct. 129, 9 L. Ed. (2d) 104.

Thus error in record does not entitle defendant to resentencing.—A defendant was not entitled to resentencing on the basis of an erroneous record transmitted by a clerk to a warden, since the clerk was performing a purely ministerial act, and the error in no way prejudiced the rights of the defendant. Austin v. State, 158 Me. 292, 183 A. (2d) 515.

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".

Mental Responsibility for Criminal Conduct.

Sec. 17-A. Proceedings when a person pleads insanity. — When a finding of probable cause has been made, or an indictment has been returned against a person, or a person has taken an appeal to the superior court, a justice of the superior court upon petition, if a plea of insanity is made in court or the justice is notified that it will be made upon arraignment, may order such person committed to the custody of the commissioner of mental health and corrections to be placed in an appropriate institution for the mentally ill or the mentally retarded, to be there detained and observed by the superintendent, or his delegate, and professional staff until further order of court, for the purpose of ascertaining the condition of the person. When further detention for observation is deemed no longer necessary, the commissioner shall report such fact to any justice of the superior court. Said justice shall then order the person returned to the appropriate court for disposition. (1963, c. 311, § 3.)

Sec. 17-B. Not responsible for criminal act produced by mental disease or defect.—An accused is not criminally responsible if his unlawul 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. (1963, c. 311, § 3.)

Sec. 17-C. Commitment of persons acquitted on basis of mental disease or defect.—When a respondent is acquitted, by reason of mental disease or mental defect excluding responsibility, the verdict and judgment shall so state. In such case the court shall order such person committed to the custody of the commissioner of mental health and corrections to be placed in an appropriate institution for the mentally ill or the mentally retarded for care and treatment. Upon placement in such appropriate institution and in the event of transfer from one such institution to another of persons committed under this section, notice thereof shall be given by the commissioner to the committing court. (1963, c. 311, § 3.)

Sec. 17-D. Discharge or release of persons committed; recommitment.—Upon a petition to the Superior Court in the county where committed or to a justice, in vacation, in said county, and upon satisfactory proof that his discharge, or release in the custody of a relative or friend, will not endanger the peace and safety of the public, said court or justice may discharge, or release in the custody of a relative or friend, the person committed under section 17-C. Notice of hearing on the petition shall be given to the county attorney at least 7 days before the hearing date. When released in the custody of a relative or friend such relative or friend shall give bond in an amount to be determined by said court or justice, to the judge of probate for the county from which committed, with sufficient sureties, approved by said judge of probate, conditioned for the safekeeping of such person, and the payment of all damages which any person may sustain by his acts, occasioned by his mental disease or mental defect.

When, upon hearing, a person who has been released to the custody of a relative or friend is again found to be suffering from mental disease or mental defect so as to endanger the peace and safety of the public, the court or a justice of the superior court, in vacation, in the county where originally tried may, by order stating the fact of such mental disease or mental defect, recommit him to the custody of the commissioner of mental health and corrections for placement as provided in section 17-C. Such recommitment shall cancel the bond but shall not relieve the sureties from liability for acts of the person occurring prior to recommitment.

A person who has been discharged under this section may be readmitted to the appropriate institution only under the appropriate provisions of chapter 27. (1963, c. 311, § 3.)

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.

Secs. 38-A, 38-B. Repealed by Public Laws 1963, c. 311, § 2.

Editor's note.—The repealed sections, which related to mental responsibility for criminal conduct and commitment of persons acquitted on basis of mental disease or defect, derived from P. L. 1961, c. 310, and had been amended by P. L. 1961, c. 407, § 6, which became effective on its approval December 1, 1961. For present provisions re mental responsibility for criminal conduct, see §§ 17-A to 17-D of this chapter.

Execution of Sentences.

Sec. 40. Sentence in default of payment of fine and costs.—Whoever is convicted in any court of a crime which is punishable by a fine only, without imprisonment, and is liable to imprisonment in a county jail for the nonpayment of said fine, may be sentenced to pay said fine and the costs of prosecution, and in default of payment thereof to be imprisoned in accordance with law, but the payment of said fine and costs at any time before the expiration of the imprisonment shall be a full performance of the sentence. (R. S. c. 136, § 44. 1163, c. 402, § 255.)

Effect of amendment.—The 1963 amendment deleted "or by a trial justice" following "any court" near the beginning of the section.

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

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 provided, any convict sentenced to pay a fine or costs or both and committed or confined for default thereof and for no other cause shall be given a credit of $5 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 be discharged in less than 30 days in any case, nor shall any convict serve more than 11 months to discharge his liability under any single fine or costs or both, and in all cases no further action shall be taken to enforce payment of said fine or costs or both. (1957, c. 439, § 1. 1963, c. 289.)

Effect of amendment.—The 1963 amendment deleted "expressly" following "otherwise" near the beginning of this section, inserted "or confined" following "committed," substituted "$5" for "$1" near the middle of this section, inserted "be discharged in less than 30 days in any case, nor shall any convict," and substituted "all cases" for "such case" near the end of the section.

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.

Section 3 to 4-A. Duty of Clerks of Court.

Costs Taxable for the State in Criminal Prosecutions.

General Provisions.

Sec. 1. Costs taxable for state in criminal prosecutions. No attendance shall be taxed in cases of defaulted recognizances, other than is taxed in the prosecutions in which they are taken, until the commencement of a proceeding thereon.
(1963, c. 414, § 143.)

Effect of amendment.—The 1963 amendment substituted "commencement of a proceeding" for "return of a writ of scire facias issued" in the fifth paragraph. As the rest of the section was not affected by the amendment, only the fifth paragraph is set out.

Duty of Clerks of Court.

Sec. 4-A. Fines, costs, and forfeitures in superior court.—Every clerk of a superior 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. (1963, c. 402, § 256.)

Duty of Trial Justices and Judges of Municipal Courts.

Secs. 5-7. Repealed by Public Laws 1963, c. 402, § 257.

Editor's note.—Present § 4-A contains provisions similar to repealed § 5, which, however, was applicable to trial justices and judges or recorders of municipal courts, as well as to clerks of superior courts. Section 5 had been amended by P. L. 1957, c. 334, § 15. Section 6 had been amended by P. L. 1961, c. 317, § 487.

Application of repealing act. — Section 280 of c. 402, P. L. 1963, provides that the