

# MAINE STATE LEGISLATURE

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# Public Documents of Maine:

BEING THE

## ANNUAL REPORTS

OF VARIOUS

### PUBLIC OFFICERS AND INSTITUTIONS

FOR THE YEARS

1870-71.



AUGUSTA:

SPRAGUE, OWEN & NASH, PRINTERS TO THE STATE.

1871.

REPORT

OF THE

COMMISSIONERS

UPON THE

JAIL SYSTEM

OF THE

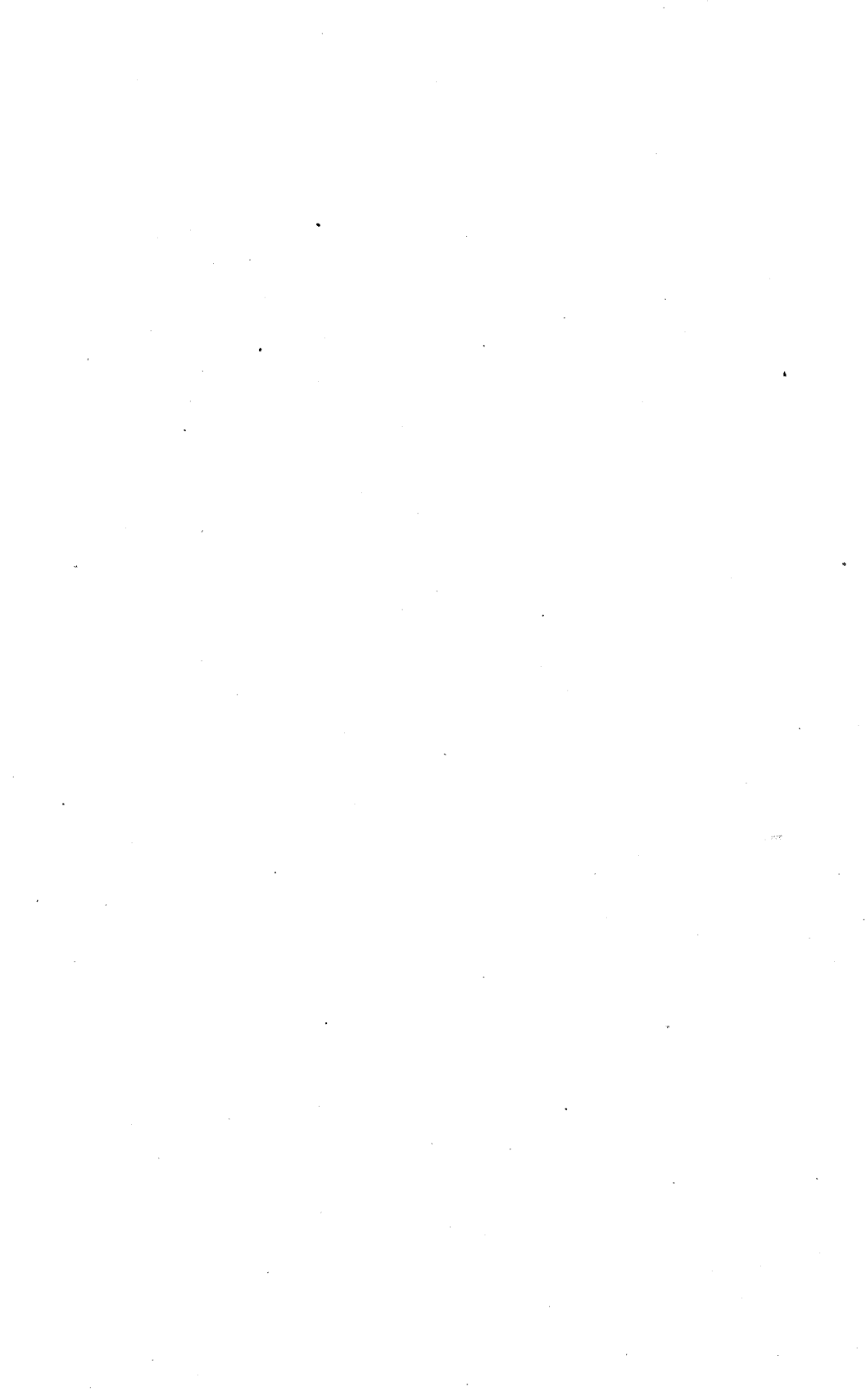
STATE OF MAINE.



AUGUSTA:

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# REPORT.

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*To the President of the Senate  
and Speaker of the House of Representatives:*

## INTRODUCTORY.

We regret that the lateness of the season when our commission was filled, and unavoidable delay arising from a failure to receive early replies to certain statistical enquiries connected with the subject matter of our investigations, have deferred the presentation of this report of our examination into the jail system of Maine, and of the conclusions to which we are brought, to this late stage of the session ; but we trust not to find the Legislature so engrossed with topics connected with the development of the resources of our State as to preclude a careful consideration of this subject, of primal importance, affecting its moral health.

## STATE'S PRISON.

It was thought advisable to visit the State's Prison, and most of our jails, and the management of these institutions has incidentally come under our notice ; but as to the first (State's Prison), we did not feel certain that it came within the scope of the resolve under which we were acting, nor, if it did, did we see aught in its conduct which we felt certain ought to be changed.

The report of the warden and inspectors, already submitted to you, shews a gratifying condition of affairs. That it is financially prosperous is to be attributed mainly to its proper management in other respects ; for compulsory labor, performed by convicts, can only be profitable while they are properly governed and wisely directed. The able and experienced Secretary of the New York Prison Association, in his twenty-fifth report, speaks of us thus : "The State Prison of Maine has long since, under the management of its present head, Mr. W. W. Rice, taken rank as one of the most successful penitentiaries in America, in respect both of its finances and its reformatory work." In his next preceding report, the secretary had declared it a "model institution," with the very

large deduction to be made on account of its failure to provide religious or secular instruction for its inmates—a defect the warden is totally unable of himself alone to remedy, desirous as he is of doing it. We are not so carried away with an over-zealous spirit of reform as to desire to change that which is well enough as it is ; therefore we make no recommendation as to the conduct of the State's Prison, beyond that of supplying its need of spiritual and mental culture for its inmates.

#### MANAGEMENT OF OUR JAILS.

Nor have we been made aware of any complaint as to the conduct of those individuals to whose immediate care the keeping of the jails in our several counties is committed ; but there is a deeply seated and widely spread conviction that our entire jail system, as a whole—if it can be dignified by that name, where *system* there is none—is radically defective and erroneous, justifying the declaration made from the Plymouth pulpit that “ Our jails are a disgrace to civilization.” We do not intend to apply this remark so much to their architectural construction, as to their moral condition and effect.

#### REFORMATION.

The true or main purpose for which jails and similar edifices are erected and maintained, is that the *reformation* of those whose disregard of the law of the land and of the rights of their fellow-citizens has caused their incarceration therein, may be accomplished. It is not as a *retaliatory* measure that an offender is imprisoned, but that through fear of this punishment he and others of like evil disposition may, in the future, be deterred from a repetition of his offence. It is proper to remark that we limit our idea of *reformation*, as here considered, to a reform in the *conduct* of the individual, which is all that organized society has a right to exact, though the christian moralist may properly enough seek to effect a change of thought, feeling, disposition and character, which shall greatly determine the happiness or misery of a man, but does not affect that of the community, except as it is developed in action.

#### PREVENTION OF CRIME.

If it be assumed as an axiom—which we think indubitable—that *prevention* of crime is the end and object especially to be sought,

we shall be led to enquire, when we come to consider incarceration as *one* means of prevention, *what kind* of imprisonment is likely to be most effectual in attaining the desired result; but in discussing preventive measures, we hope to be excused from devoting ourselves exclusively to the consideration of such only as relate to confinement of the offender, and that we may be permitted briefly to refer to such as are also intended to obviate the necessity of punishment in many instances, and to cognate subjects, and to other efforts and movements which have this end in view.

#### CAUSES OF CRIME.

To determine the action to be taken to *prevent* crime, requires a knowledge of the causes which lead to its commission, that we may determine how far these are removable or capable of being circumscribed by legislation.

If by interrogating the present inmates of our jails we can learn the reason of their being there, we can safely assume that these same causes can be relied on to keep up the supply of criminals, if their continued operation be permitted to go on unchecked by active interference.

The number of persons confined in the State's Prisons throughout the Union in 1870, was very near the exact figure of 16,000. Of these, more than a quarter could not read, not one in twenty had ever learned any trade, more than a fourth were aliens, and many more of foreign parentage, little less than this proportion were minors, while over three per cent. were insane, idiotic, or feeble minded to such an extent as to justify their being so designated.

Of the prisoners at Thomaston, one-fifth are of foreign birth, and many more of foreign extraction; one-third are minors, and quite a large number more have barely passed their majority. What their educational condition is the official report does not show, but private enquiry has satisfied us that the proportion of those able to read anything more than the alphabet is but little less than that above given as existing in all the prisons of the country, notwithstanding the fact that we have not such a tide of immigration pouring over our borders as is flowing into the middle and western states, nor such a mass of ignorant native population as is found in the south.

*Eighty-eight* out of every hundred committed at Thomaston are found to have been of previously intemperate habits; nor should

we be surprised to find the percentage large of those who have been frequent visitors at "her house" which "is the way to death, going down to the chambers of hell."

If we examine the returns of those institutions created for the purpose of restraining and reforming juvenile offenders—not confining ourselves to our own State, but taking the statistics throughout the Union—we are taught the same lesson as to the cause of their early divergence from the paths of virtue. The aggregate number of their inmates in 1868 was 7,963; and the average age a trifle *less than thirteen* years. Of them about two-thirds were of foreign extraction, nearly the same proportion orphans, or half-orphans, and of the rest most had parents worse than none. About one quarter of these children had become habituated to the use of intoxicating liquors, and more than a third (thirty-six per cent. in Maine,) used tobacco; two-thirds are returned as profane, and nearly one-third (in Maine) as vagrants, accustomed to sleep in barns, out-houses, &c.

If measures could be devised to prevent the children from growing up to defy the law and to invade the rights of others, it is self-evident that crime would die out with the present generation of offenders; therefore youth should be protected from those evil influences to which it is peculiarly exposed and least able to resist, and especial care taken to guard them while innocent, and to reform them when guilty.

The figures to which we have called attention direct us to five prolific sources of crime—lack of mental power, of mental culture, of any useful handicraft, immaturity and exile. It is to be observed that most of these causes to which we have adverted are negative in their character. "They are want of knowledge, want of a trade, want of work, want of a home, want of friends, want of parents, and want of mind." So far, then, as the State can supply these wants it removes the causes, and, necessarily, the effects which follow. That these evils can be entirely eradicated by legislation is, of course, impossible; but in so far as we are successful in our efforts in this direction, by so much shall we probably diminish crime.

This statement of the needs of our criminal population—including in this term not merely convicts, but that large class from which their ranks are principally recruited—of itself indicates the proper remedy.



## OUR DUTY.

If the remedy can be found, it not only should be our desire but is our duty to apply it, especially to those who have been incarcerated under our laws. While at liberty they are to some extent personally responsible for yielding to the adverse influences with which they are surrounded, and there is at least the *opportunity* for them to be reached and reformed by those of a contrary character; but when we shut them up we exclude this hope; we then become responsible for the influences with which we surround them. They become the wards of the State, which has thereby charged itself with the care of their highest interests, and it is of the utmost importance not only to them but to society that this trust be faithfully discharged. By assuming to control their course we have also assumed the obligation of trying to guide it into the proper direction. We have bound ourselves not only to supply their physical wants, but to stimulate and then satisfy the cravings of their intellectual and spiritual appetites. The public conscience ought to be so far enlightened as to see, and the public heart sufficiently softened to feel, that it is as gross a wrong (to say the least) to take no steps to reclaim and invigorate the mind and conscience of the prisoner as it would be to torture and starve his body or to deprive him of sight.

## IGNORANCE.

In placing ignorance as the first and most prolific source of crime we shall, doubtless, meet with universal acquiescence, and are supported by evidence furnished from every quarter.

While ignorance of the law excuses no man from suffering the consequences of misconduct, it peculiarly exposes him to its penalties; we are therefore ourselves culpable if we use not every exertion to furnish the means of information and to *compel* a resort to them. Our State has been, and is disposed to be liberal in its offer of opportunities for culture; yet hundreds, yea, thousands, of our children are growing up "nearly as guileless of knowledge as if Eve had never rifled the tree whereon it grew." How many of the inmates of our penal institutions—and how very many more outside them, but bending their steps toward their gates—are unable to stand the miserable test of knowing how to read!

How large a proportion of our own fellow citizens are wholly illiterate we have no means at hand of ascertaining, but in New York it is stated that three per cent. of the community cannot

read, while among the prisoners the percentage is thirty-two per cent.; hence it is inferred that "Not knowing how to read is eleven times more likely to lead to crime than knowing;" or, as Dr. Wines states it, "One-third of the crime is committed by one-fiftieth of the population."

If, then, the relationship between ignorance and crime be so intimate that which so surely leads to crime is itself criminal and should be so treated. Our schools should not be absolutely free but attendance should be compulsory; actually so, and not in name merely. The laws against truancy should be strictly enforced, as well as that relating to the employment of children in our factories. And this important matter should not be left to the discretion of towns to be acted upon or neglected (as those things too frequently are which are left to nobody in particular), but it is a duty imposed upon legislators too important to be delegated.

If a man threatens an assault upon the person of a fellow citizen or the destruction of a few dollars' worth of property he may be arrested, ordered to give bonds to keep the peace and be of good behavior, and failing to do this, may be imprisoned. The mass of ignorance and youthful depravity in this State is a *perpetual menace* to society—assaulting its very foundations and invading its dearest rights.

We have the right to *compel* enlightenment; and if confinement and discipline become necessary to enforce the reception of instruction they should be resorted to, treating truancy as a cause for imprisonment at the Reform School.

#### WANT OF A TRADE.

Not only is the unlettered condition of so large a portion of our people shameful, and a reproach to us, but the figures also indicate a dangerous ignorance of any proper and regular means of obtaining a livelihood. What the percentage is of those confined in our jails who are unacquainted with any useful handicraft we do not know; but finding that it is seventy-two per cent. in the county jails of New York, and seventy-four per cent. in those of Ohio, while it is *ninety-seven* per cent. of all the state prisoners in the country, we shall not greatly err in saying that *three-quarters of our county jail prisoners are destitute of a trade.*

Proverbs are the condensed wisdom of ages—apothegms which have stood the test of time and generations. One of the most fa-

miliar of them, that has long passed unchallenged and universally accepted, is that "An idle brain is the devil's workshop;" or, as that divine, whose hymns were so well known to our childhood, expresses the same idea, "Satan finds some mischief still for idle hands to do." And, to add one more quotation, Howard said, speaking with especial reference to prisoners, with whose condition and wants he was most thoroughly and disinterestedly familiar, "Make men diligent and you make them honest."

Exertion to find places to which boys in our Reform School who are sufficiently reformed to be trusted without its walls can be apprenticed, would be greatly beneficial, and thereby room could be made for many idlers about our streets who need the discipline of that school, in order that they, in turn, may be brought to a willingness to be taught some useful avocation.

To the prisoners at Thomaston, the trade learned there is of great advantage, as it always may be, and frequently is, the means of earning an honest livelihood after leaving its walls. But no such instruction is furnished to those confined in our county jails, nor is any useful occupation provided for them; but there is exhibited the "revolting absurdity of withholding a priceless boon from the lesser criminal to confer it upon the greater."

#### THE GREAT DEFECT IS WANT OF LABOR IN OUR JAILS.

We do not hesitate to affirm that the great, overshadowing defect of our jail system, is the want of suitable occupation for the prisoners; not merely to lighten the burden they impose upon society, though that is worthy of consideration, yet is secondary to the chief aim of protecting the community by the reformation of the offender. Combined with other proper surroundings and teachings, it is demonstrable from actual experience, as well as inferable from the constitution of man, that the moral effect of a convict working to aid society instead of preying upon it or hanging upon it as a mere burden, is in the highest degree efficient and beneficial. That this is so, does not admit of doubt. The practical question is, how the public can perform this duty of supplying labor to those it has confined, without incurring an intolerable expense. We hardly believe that this is possible under our present system; at least the best results are clearly not attainable until we change our mode of confinement.

## REMEDY.

The solution of the difficulty is found in the establishment of district prisons, like the Albany Penitentiary, and the adoption of some other changes hereinafter mentioned.

In Massachusetts, where for many years this subject has attracted great attention, and received careful investigation, these district prisons have recently been created.

The Albany Penitentiary, where most of the prisoners were sentenced for a term of six months or less, has netted more than twenty-five hundred dollars per year above its expenses, partly derived, however, from board of United States prisoners. The Detroit House of Correction, without this source of profit, makes as good a financial exhibit, shewing that it is possible to make available the labor of persons confined in institutions below the grade of state's prisons. The House of Correction in Detroit is supplied with its labor from all the counties in Michigan, and is not merely local. The excess of earnings over expenses at Albany in 1868, was \$10,235, and, we believe, more than that in 1870, and the same is true of Detroit.

The present appears to us the most favorable time for the inauguration of this policy in Maine, though our distance from a large market, and other circumstances, would probably prevent so satisfactory a pecuniary result as has been reached in Albany and Detroit. Financial success, though exceedingly desirable, and demonstrably attainable, is not our chief aim nor motive in making this recommendation. We are influenced still more by the belief we entertain, in common with those who have made a much more extended and careful enquiry into the condition and wants of criminals, that labor is the true reformatory agent; or, at least, that without it other agencies will be comparatively unavailing. It is certain that it cannot profitably be introduced, nor with its best moral effect, into our present county jails, with their small number of inmates of both sexes, all ages and every grade of crime. What we would suggest is, that the large edifices at Bangor, Augusta, Portland and Auburn be used as district prisons, to which criminals sentenced for short terms be sent from various parts of the State, subjecting them to as little transportation as may be consistent with more important considerations, yet not confining ourselves rigidly to territorial lines, but having regard rather to the moral characteristics of the convicts than to their places of

nativity or residence. Thus the men may be classified, their work rendered more systematic and profitable, and their moral condition more likely to be improved. With this end in view, the power of removing men from one jail to another should be lodged in competent hands, to be exercised whenever moral or other considerations might make it advisable. If a fifth district jail be called for, the one at Machias is new, and could be used for the purpose.

#### PRESENT TIME FAVORABLE TO APPLY REMEDY.

The present time is thought to be particularly favorable for this movement, because in three of our counties there are no jails, and in others they are so old as to require renewal soon; while at the same time, a new building is in process of erection at Bangor that could be easily adapted to this purpose, and from personal examination we are enabled to say that very trifling changes only would be required at Portland, Augusta or Auburn to furnish adequate and suitable accommodations for the prisoners of the State. By adopting the plan here proposed that mingling of first offenders with hardened criminals, which is so palpably wrong and injurious and is everywhere strongly reprobated, would be avoided, and different branches of industry could be pursued at the several institutions according to the ages and capacity of the inmates, or the demands of the particular locality.

#### OBJECTIONS CONSIDERED.

The only obstacle our proposition is likely to encounter must arise from local jealousy, and from the fact that criminal costs are now paid by the counties where convictions are had. It is our belief that the whole administration and expense of our criminal procedure ought to be a matter of State control; nor do we believe that counties will be generally so extremely anxious to retain their law-breakers within their own limits if it can be made reasonably to appear that they can be confined at less expense, with more pecuniary profit to the State and moral advantage to themselves, in some other locality; but this is a matter that can be easily so arranged as to prevent, at least, any additional burden to the tax-payers, though we repeat that true economy consists in the adoption of such measures as shall have the best permanent moral effect which may or may not be those that are temporarily the cheapest. In this instance, however, it is highly probable that the

best course will be the least expensive. It would certainly seem that the convicts of Piscataquis County could be much more economically kept at Bangor and those of Oxford County at Auburn than they could be at Dover and Paris, if they can find employment at the larger places and are to remain idle at the latter.

#### MODUS OPERANDI.

The same sum now allowed for the support of a prisoner might be charged to each county for each man it commits and it be credited in offset with the avails of his labor, paying only the difference if his labor be not self-supporting, and applying the surplus, where there is any, to aid in the care of those who are not self-sustaining. From the best information we can obtain we are led to the conclusion that the sum usually allowed for board of county prisoners is rather higher than is absolutely necessary for the purpose. The expense of *mere board* at Thomaston (the same for which our County Commissioners are authorized to allow, and many do allow, \$3.00 per week), is barely a dollar a week. Evidently men can be boarded cheaper where the supplies can be furnished and consumed in large quantities and near large markets, than they can if the same number of persons are scattered over a large area and supplies for each section are to be independently purchased. If it be thought, then, that the sum fixed by the County Commissioners for prisoners' board is larger than ought to be charged to the counties in the event of the establishment of district prisons, the more exact method of keeping a precise account of the cost of each prisoner's support and of his earnings might be adopted, and would certainly be the more just course. Then the aggregate of earnings and expenses of each county's prisoners would fix the balance to be paid to or received from the district prison.

#### PLAN PROPOSED PRACTICAL.

We have said that the establishment of these prisons in Massachusetts is but recent, the act for the transfer of prisoners having been approved June 18, 1870; but the *idea* is not novel. It had been pressed upon the attention of successive legislatures for several years by the Board of State Charities, and by other gentlemen who had made the subject of prison and reformatory discipline a study and given it much anxious thought, bringing to its investigation great experience and diligent enquiry. The unanimity of

sentiment among those who have a right to speak with authority justifies us in recommending it; and we mention this that it may not be supposed that we are carried away with any desire to initiate a new and doubtful enterprise.

We do not claim any originality of invention in anything we recommend; following in the footsteps of the many able men who have given us the result of their labors for our guidance, we have been happy to profit by their counsels, have readily adopted their ideas, and have not hesitated to appropriate, in some few instances, almost their identical arguments and language in enforcing them.

#### HOUSE OF REFUGE FOR WOMEN EXCLUSIVELY.

The prisons we speak of should, in our judgment, be used solely for the confinement of men; and whether there be any substitution of district for county prisons or not, there should be, at least, this change—that hereafter no women should be confined in the same place with the men. At whatever expense may be necessary, a place should be provided for the separate confinement of women, whether their terms of imprisonment be long or short. We wish to express our thorough conviction on this point, in the strongest terms. If the benign influence of a good woman upon a man can hardly be over-estimated, neither can the debasing and corrupting effect of a bad one be over-rated. A convict lately requested his chaplain to preach from the eleventh verse of the fourth chapter of Hosea, and when asked his reason for selecting this text, replied, "Why, sir; that is what brought me here, and most of the rest of us, I guess." Accustomed to mingle with none but vicious females of the very worst class, the prisoners only associate them in their thoughts with the vilest and most degrading imaginings. It is not enough that they be so far separated as to deprive them of any probable opportunity of corrupting conversation; but they ought not to be permitted to see each other, or to be in the neighborhood of one another.

In our county jails, or many of them, the sexes are scarcely separated at all, but ribald talk is freely carried on between them (even if, in the insecure and dilapidated condition of some of them, no worse befall,) from cell to cell, or across the narrow passage, which permits them easily to see and converse with each other, to the certain ruin of youthful offenders, and to the great injury or offence of those detained as witnesses, for trial, or for debt.

## INDUSTRIAL SCHOOL FOR GIRLS.

Numerous petitions—none too soon—are pouring in upon the Legislature, for the establishment of an Industrial School for Girls. It is shameful that almost a score of years has been suffered to elapse since the erection of a Reform School for Boys, without any similar provision being made for the nurture and reform of the youth of the other sex, whose good or evil course and example still more strongly affects the interests of society. Should an appropriation be made for this purpose, it may be made sufficient, if thought expedient, to defray the cost of a building with entirely distinct wings or compartments, one of which could be used for juvenile offenders or vagrants, and the other for older females, though it would evidently be much better to have these two institutions so distinct as absolutely to preclude the possibility of the young girls being contaminated by communication with the older and more hardened convict.

Before *any* building is erected or decided upon as an Industrial School for Girls, we hope that those to whom the matter is entrusted will make careful enquiry into the respective merits of the congregate and the family system. The Commissioners incline to the belief, that for girls the family system, as it exists at Lancaster, Mass., and in several of the large western states, would be preferable. But it is unnecessary to dilate upon this topic, as it must inevitably attract and demand the careful attention of those to whom the care of inaugurating this important work will be confided. For the information of those who may like to know the probable original cost of such an enterprise, we will say that in 1854 Massachusetts purchased its farm and buildings at Lancaster for \$40,000, and these were capable of accommodating ninety-two inmates, though this number was rather more than could be provided for properly there. Although prices have since risen, we think that land is so much cheaper here, and our requirements so much less, that a less sum would suffice to launch the enterprise; but in making this remark we do not design to trespass upon the province of the committee to whom this especial subject has been referred, and will, therefore, forbear further suggestion on this point.

## REFORM SCHOOL.

Though the Reform School for Boys does not now appear to be over-crowded, yet in view of any future exigency likely to arise, the



Commission would simply intimate an opinion that the buildings there should not be enlarged so as to bring any larger number of boys under one roof, but that "family" houses should rather be provided, at Cape Elizabeth or some other suitable location, to which the boys might be transferred as a reward for and stimulant to good behavior, or that a school-ship should be purchased for their reception.

#### PARENTS HELD RESPONSIBLE.

The allusion we have made to the expense of the proposed School for Girls, and to our Reform School, leads us to offer a suggestion as to one means of, possibly, lightening the burden a little, by requiring those parents, of sufficient ability, who have permitted their children to grow up in idleness and vice, to support them, or aid in doing so, at these institutions, as they are now required to contribute to those relatives who become chargeable as paupers. Certainly there can be no impropriety in this. In nine cases out of ten, where children who have not become orphans, grow up vagrants and criminals, it is the fault of their parents. If a child be trained up in the way he should go, he will not depart from it; if he be allowed to *straggle* up, untrained, in the way he should *not* go, those whom the law of nature and of the land charges with his nurture and care ought to be held responsible. The father and mother of those children who do *not* depredate upon society, are expected and compelled to maintain them. Can it be a sufficient reason for throwing this burden upon the State that the wayward child has violated its laws? Shall careless or culpable parents be relieved of a responsibility which the careful and judicious cannot avoid? The parent's obligation to his offspring is twofold—to provide bodily sustenance, and for mental and moral growth. Can he, by devolving upon the State the more important part of his duty, be relieved of the lesser? Even if no large amount should be directly saved to the State by the passage of some such law as is here suggested, the same effect would be reached indirectly, inasmuch as fear of pecuniary liability for the child's support after commitment would tend to cause more careful supervision over his conduct. Very many parents have no great objection to being relieved of their children, even if it be the Reform School that brings the relief, who would use more strenuous exertion to keep them at work and out of mischief, if such courses were likely to entail expense.

## INTEMPERANCE.

We have spoken of want of knowledge, want of work and of a trade, as causes of crime, and have indicated how these defects might be remedied while the criminal was undergoing punishment, if not before, so that at the expiration of his term he would be less liable to repeat his offence, and have less excuse for doing so. The other chief cause of crime, which brings the greatest proportion of the convicts to our penal institutions, is the use of intoxicating liquors. Attention has already been called to the fact that eighty-eight per cent. of those confined at Thomaston were of intemperate habits. The warden of the West Virginia State's Prison reports that, of the eighty-seven prisoners in his charge, fifty-eight were actually under the influence of liquor at the time they committed the offences for which they are imprisoned!

That the depressing effect of poverty, loneliness, exile, and friendlessness, coupled with the lack of power and opportunity to enjoy, or of sufficient culture to appreciate reading or similar amusements for the vacant hour, may all have contributed to induce a resort to these stimulants, is doubtless true; but after all proper deductions are made, it will still be found that the depraved appetite of the victim is the chief cause of intemperance; so that the furnishing of the means of culture and other means of enjoyment must be still supplemented by repressive legislation to suppress this prolific source of crime. Difficult as it is to teach an adult—especially one wholly unaccustomed to even the methods of learning—the rudimentary branches of education, it will be easier to inform his mind and to make his hands skillful with wood or iron, than it will to restrain his appetites and remove his thirst for liquor. While he is under lock and key you keep him from gratifying his appetite; but, with its temptations everywhere assailing him on his exit from the prison, the chances are largely in favor of his yielding. So long as the stimulant to which he has become habituated can be readily obtained, nothing less exciting will serve his turn.

If, then, intoxicating liquors be so provocative of crime, the laws should treat their illegal sale as a serious offence, not to be condoned by empty and hypocritical professions of amendment, nor compounded by the payment of an insignificant fine. Selling illegally that which is so fertile a source of crime is of itself an act invoking the infliction of the severer penalties of the law. He

who obtains his living by daily violation of our wholesome statutes upon this subject, ought to be incarcerated with his victims, and also to be held pecuniarily responsible for any damage done by them while in a state of intoxication from liquors he has sold them.

It is true that the court may order imprisonment for this offence now; but the natural leaning is always to the side of leniency, and the culprit ordinarily escapes with a fine. We would suggest that imprisonment ought to be peremptorily required.

Beside this, the facts which the criminal statistics of the whole country so abundantly prove, ought to be brought home to the knowledge of the people, that they may be led to demand the faithful execution of the laws to which we are referring. Legislation enough has been had upon this subject to accomplish much more desirable results than have been reached, had it been actively enforced and received the moral support of the community.

#### TOO MUCH INDULGENCE SHOWN CRIME.

This leads us to remark that one difficulty in the suppression of crime generally, is the leniency with which it is viewed and treated, and the ease and frequency with which it is compounded.

#### GAMBLING.

Another evil under the sun, for which the community are verily guilty, is the toleration and favor shown to gambling, which is manifestly upon the increase. Gift enterprises, and a multitude of other devices for obtaining money in some other way than honestly earning it, are not only *permitted*, but encouraged, by those who ought to condemn them, knowing that they are in direct violation of law, and most pernicious in their tendencies and associations.

#### SENTENCES TOO SHORT.

In short, a *uniformly* vigorous execution of the law is the most active agency in the repression of crime. This is but repeating the oft-quoted maxim of Beccaria, that the efficacy of punishment depends upon the *certainty* of its infliction. We refer to this because without it the most carefully devised system will be of little avail; its prescribed penalties will be no terror to evil-doers if a reasonable hope of escaping them exists. Nor is this all—not

only should the infliction of *some* punishment, but of an *adequate* one, be morally certain to follow detected guilt. More care should be taken in graduating sentences so as to more justly apportion them to the particular case and person before the court, the amount of turpitude involved in the particular offence wherewith a man stands charged not always affording a true index as to his criminal disposition. Where a man is known to the officers of the law to be criminal in his tastes, habits, associations and purposes, he should be so identified, described and photographed when committed to jail as to be recognized in other portions of the State should he again offend, and that the proper measure of punishment may be meted out to him.

Generally a discretion is left to the court in passing sentence to award a longer or shorter term as they deem proper. Ordinarily the failure of justice (if any) has arisen from too great indulgence rather than from too great severity. The sentences generally are for too short terms, when the confinement is to be in our county jails, arising partly no doubt from distrust of the system upon which they are kept, which leaves the prisoner wholly unemployed and with no chance for improvement physically, mentally or morally. Should labor be introduced, in accordance with our suggestions, we believe the prisoners should be detained long enough to learn something of some useful occupation, to diminish somewhat the weight of the burden he has imposed upon the State, and to receive some benefit from a stricter and more moral discipline than that to which he has hitherto been subjected.

Most of the county jail prisoners are in for thirty or sixty days for drunkenness. At the expiration of that brief period they go out with appetites only sharpened by their enforced abstinence; and in less than a week they will be returned to their cells for repetition of the old offence. Some of them are committed half a dozen or more times in the course of a year, improving the few days' liberty they occasionally have to indulge in drunkenness and debauchery. They should be awarded longer sentences under circumstances and surroundings that will justify the hope that a few of them at least may be reclaimed.

At the same time that changes are made in the length of the terms it should be put within the power of the culprit by good behavior to shorten them. The State prisoners now have this privilege, though in their case the Warden has for years repeatedly

protested against the short terms awarded, by argument and by showing the contrary practice in those States where the subject of prison discipline had received the most careful attention. For instance, while (in 1867) the percentage of State's prisoners in Maine sentenced for two years or less was sixty-three, in Massachusetts it was but twenty-eight per cent. And but the other day he remarked that the one year's sentence passed upon a young man was merely an injury, while at the end of a term twice or three times as long he could have left Thomaston with a good trade.

Indeed, if (as we have assumed) protection to society be sought by the reformatory effect of punishment upon the offender, the true principle would seem to be to continue the confinement until the reformation is effected. If that desirable end never be accomplished, then the convict never becomes fitted nor entitled to resume his place as a free citizen. In the language of one who has devoted a life-time to the subject, "Keep your prisoners under sound and enlightened discipline until they are reformed—keep them for your own sake and for theirs. The vast majority of those who enter your prisons as criminals can be sent back into the world, after no unreasonable term of probation, honest men and useful citizens. Let the small minority remain, and if death arrive before reformation, let them remain for life."

Recognizing the practical difficulty of changing our whole legislation to conformity with this theory, even though it be speculatively correct, the Commissioners do not venture to recommend here the adoption of indeterminate sentences, but will only suggest the idea as affording food for thought now and perhaps a basis of action hereafter. An extension of the term of jail sentences, with power lodged in the prisoner himself to shorten it by good conduct, we do recommend. This principle of commutation is recognized by more than twenty States, including our own, which passed such a law in 1866 (Chap. XX.) that is now the fourteenth section of chapter 140 of the revision of 1871. If this be correct in principle and found to work well in practice, as applied to the prisoners at Thomaston, there can be no reason why it should not operate beneficially upon those confined at Portland or Bangor. That it would prove successful can hardly be doubted, when we consider that it is analogous to the mode in which individuals, society and the world are governed; rewards being bestowed upon those who

do well and punishment upon those who persist in evil doing. It is fair to presume that the prisoners at Thomaston are no more likely to be sentenced beyond their deserts than those who are sent to county jails; then the former are no more entitled of right to a shortening of time than the latter—and no more entitled to receive favor. As the more wicked transgressors they are less to be favored; yet, if this commutation be based on its proved moral tendency, and *not* on favor, you are again taking away this boon also (of “working out his own salvation”) from the lesser criminal to bestow it upon the greater.

#### IRISH PRISON SYSTEM.

The institution of district prisons, with the power of transfer, as proposed, would also allow the inauguration of that which is known as the “Irish Prison System,” which is found everywhere approved by those who are most conversant with and capable of judging of its merits. The limits to which this report must be confined will not permit of our going into the details of this subject; but we will simply say that the system adopted with such unprecedented success in Ireland, is to have the prisons graded with different kinds of labor, and to classify the prisoners in each place, making their promotion from grade to grade, and prison to prison, to depend upon themselves, with the penalty of being retrograded for misbehavior. One other marked feature of this system is, that the commutation of the time of imprisonment to which good behavior will entitle a prisoner is conditional and forfeitable, not merely by positive crime, but by misconduct, and there is then incurred the liability of being remanded to jail, there to complete the original term of sentence. By uniform good conduct the convict continually hastens his deliverance; but even after he has rejoined the outside community, it is only by perseverance in the way of well doing that he can preserve his liberty.

We are well aware that the vastly greater extent of country, the facility of inter-communication, and the migratory habits of our people, are difficulties to be encountered here which do not exist in Ireland, and accordingly that supervision over the conditionally discharged prisoner is much more easily maintained there than here. Yet we see no reason why it cannot be properly tested. When first attempted there it was but an experiment, of much more doubtful issue than it would be here now. The only objection being that the person subject to oversight could leave

the State to escape it, the reply is plain : If he propose to behave himself he will have no occasion to leave, or to fear that general observation of his conduct, associates, &c., to which every member of society is subjected at the hands of his fellows. If he be disposed to misbehave, the State will be well rid of him, and so much good, at least, will have been accomplished. Nor can any sister state rightly complain of us that we have sent to them a man whom, relying upon uniform good conduct, we had thought fit to be restored to the society of our own citizens.

#### CARE OF DISCHARGED PRISONERS.

One thought occurs here. If we subject the discharged prisoners to inspection, with the intent to punish them if they go wrong, it would seem but fair that we should make some effort to aid them in guiding their steps in the right path. It is every one's duty, however, to obey the law and be a good citizen; and it hardly seems incumbent upon the State itself to do any more than to furnish its people with the means of the knowledge of good and evil, leaving them then to the responsibility of their choice; but we trust that private benevolence and christian charity might be relied upon to do something to aid those who were disposed to become and continue good and law-abiding citizens.

#### INSTRUCTION.

In order to fit prisoners to become such citizens, we have spoken of the imperative necessity of furnishing them with instruction, mental, moral and religious. This cannot be done while they are scattered and confined over the whole State, as they now are, a few in this county, and a few more in that. If aggregated according to the plan suggested, they might be taught evenings, or daytime, as might be thought most advantageous, though we see no objection to appropriating the evening to that purpose. It should be enjoined by positive statute upon those having charge of these institutions, that at least one hour's instruction daily in the elementary branches be given to those who did not already possess a sufficient acquaintance with them. Into all the details of prison management it is not necessary or desirable to enter here; the charge of them will doubtless be placed in the hands of men who understand their duties; but in addition to the matter of education we will just mention that of personal cleanliness, be-

cause the deficiency in this respect is so marked and lamentable. The bath should not only be provided, but the use of it compelled; and if the prisoners' clothing be filthy or infested with vermin, new should be substituted. We have nowhere seen cause to suppose that the prison diet needed to be improved in quality or increased in quantity; we believe it is generally even more than they have a right to expect or require. When such rations as are dealt out at Thomaston can be furnished at a cost (for food alone) of a dollar per week, we cannot help thinking that while wages are so high that a working-man can easily maintain himself and family in comfort, the labor of our prisoners ought to be sufficient to clothe as well as feed them without taxing their strength so much as to prevent their being able to give an hour in the evening to mental improvement. If it were found that their labor is self-supporting, or nearly approaching it, they might be given a small interest in their own earnings as a stimulus to industry and exertion, and in order that they might have a small fund to aid them when first discharged and until they found employment.

#### RECAPITULATION.

Briefly and succinctly to recapitulate, we propose to modify our present jail system thus, viz :

*First*—Let District be substituted for County prisons, with a power of transfer lodged in the Prison Inspectors, or some other competent hands, so that not only a classification of the prisoners in one jail could be made but that there should be a gradation established among the several jails, and thus the hope of promotion from one to the other be held out as an inducement to good conduct, trifling privileges denied in the lower grade being permitted in the higher.

*Second*—We would have a House of Refuge established exclusively for women and also an Industrial School for girls.

*Third*—Into these district jails and places of confinement we would introduce labor, not only to lighten the burden to the counties, but also, and mainly, that it might operate as a reformatory agent upon the prisoner. We believe that under the influence of regular habits, hours, diet and sleep, a man who can supply the wants of himself and family out of jail ought to be at least self-supporting in confinement, and hope that many whose ignorance of letters and lack of skill in or of disposition to labor, joined with



irregular habits, have made them only a burden to the community may become self-sustaining.

*Fourth*—Under this treatment, with regularity in work, diet and habits, we think skill would generally be given to the workman, and further, that the ignorant might be taught the elementary branches of a common school education, and moral and religious instruction also be imparted.

*Fifth*—To carry on this reformatory work with success those who have shown a criminal disposition by repeatedly offending ought to be confined for a sufficient length of time to permit this course of treatment to produce its natural and desired effect. We therefore recommend longer sentences than are usually accorded in such cases, and greater effort to learn the previous history of the criminal, that a term of confinement may be awarded proportionate to his criminality.

*Sixth*—While the consciousness that the innovation is too great to be successfully attempted at present restrains us from recommending indeterminate sentences, we wish to couple with the longer term above advised the absolute *right* on the part of the convict to shorten it by good conduct and not to depend upon mere executive clemency to do it; and we would mark his progress toward this conclusion by a steady progression from class to class and prison to prison as hereinbefore indicated.

*Seventh*—Finally, even *after* a discharge so obtained we would not relinquish all supervision over the man, but would maintain it during the whole term of the original sentence, holding him liable until the expiration of that time to forfeit this abridgment of his term and to recommitment till its termination, not only for positive crime but for such idleness, misconduct and associations as in the judgment of the governor and council, or other competent constituted tribunal, evince a continued criminal disposition.

#### CONCLUSION.

In accordance with these suggestions we herewith submit a bill embodying them, and showing how we would, if we possessed the power, put them into practical operation. It is right to add, that the provisions being substantially adopted from the statute-books of other States, the bill also indicates the method that *is* in practical operation in those States most advanced in the knowledge and application of criminal science.

That the adoption of our recommendations will involve some present outlay is quite probable; but we were surprised to find with how little expense the proposed changes could be made; and we are very sanguine that it will be compensated tenfold to society by the benefits obtained.

Indulging this hope, we confess our earnest desire to see the system we have indicated adopted, and very respectfully submit its principles and details to the consideration of the legislature.

EDWIN B. SMITH,  
ELBRIDGE G. HARLOW,  
JOHN BENSON.

AUGUSTA, February 1, 1871.

# STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND SEVENTY-ONE.

AN ACT to improve the jail system of the state of Maine, and giving further powers to the courts and officers in criminal cases.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :*

SECTION 1. The county commissioners of each of the counties 2 of Cumberland, Penobscot, Androscoggin and Kennebec, at 3 the charge of said several counties, shall, within six months 4 after this act takes effect, make or cause to be made such ad- 5 ditions, in workshops, fences, and other suitable accommoda- 6 tions, in adjoining or appurtenant to the jails in said several 7 counties as may be found necessary for the safe keeping, gov- 8 erning and employing of offenders and those charged with 9 crimes or offences, legally committed thereto by authority of 10 the courts and magistrates of this state, or of the United 11 States.

SECT. 2. The commissioners of said counties shall cause to 2 be provided, at the expense of their several counties, suitable 3 materials and implements, sufficient to keep at work all the 4 persons committed to either of the jails for their several coun- 5 ties, and may from time to time establish needful rules for em- 6 ploying, reforming and governing the persons so committed, 7 for preserving such materials and implements, and for keeping

8 and settling all accounts, of the cost of procuring the same,  
9 and of all labor performed by each of the persons so commit-  
10 ted, and may make such contracts in behalf of their several  
11 counties as are necessary in carrying out the several provisions  
12 of this act.

SECT. 3. The sheriffs of said several counties, as heretofore,  
2 shall have the custody and charge of said jails, and of all pris-  
3 oners therein, and shall keep the same by himself, his deputy,  
4 as jailer, master, or keeper, for whom he shall be responsible.  
5 The jailer, master or keeper shall appoint all subordinate as-  
6 sistants and employés, for whom he shall be responsible, and  
7 the pay of whom, including the jailer, shall be fixed by the  
8 county commissioners, and paid by their several counties.

SECT. 4. The sheriff, by himself or his deputy, he being  
2 keeper of the jail, with the consent of the commissioners, may  
3 make contracts in behalf of the several counties necessary and  
4 proper to be made, for carrying on manufacturing or other in-  
5 dustry, with like effect as when made by the commissioners  
6 themselves. The business at all times being open to the in-  
7 spection of said commissioners, whose duty it shall be to ex-  
8 amine the workings of their several jails at least once in every  
9 three months, audit all receipts and expenses thereof, and order  
10 all payments necessary from their several county treasurers.

SECT. 5. The jailer, at the expense of the county, shall fur-  
2 nish to each prisoner in his custody who is able to read, a copy  
3 of the bible, and religious instruction on each successive Sab-  
4 bath to all, and to such as may be benefitted thereby, instruc-  
5 tion in reading, writing and arithmetic, one hour each evening,  
6 except Sundays. It shall be his further duty to receive, from  
7 whatever source, by loan or contribution, any books or litera-  
8 ture of a moral or religious tone, for their use, but to exclude  
9 those of opposite tendencies.

SECT. 6. It shall be the duty of each of the boards of county  
2 commissioners in said several counties, within thirty days after

3 the passage of this act, to raise by loan to said counties or other-  
4 wise, five thousand dollars each, or so much thereof as may be  
5 needed, to make the alterations and improvements in their sev-  
6 eral jails specified and embraced in section one of this act, and  
7 to expend so much of said money as may be necessary for the  
8 purpose, in the shortest practicable time, not exceeding six  
9 months from the passage thereof.

SECT. 7. The supreme judicial court, the superior court, any  
2 municipal or police court, and any trial justice, may sentence  
3 any person convicted before such court or trial justice respec-  
4 tively, of an offence punishable by such court with imprison-  
5 ment, to either of the jails in said counties, and all sentences  
6 of imprisonment by any of the courts or tribunals in this state  
7 shall hereafter include imprisonment and labor. And all per-  
8 sons charged with offences or crimes, and imprisoned awaiting  
9 trial, may be thus imprisoned in the jail in either of said coun-  
10 ties which shall be nearest to the place of trial, and the mitti-  
11 mus shall be issued accordingly. And the jailer to which  
12 such person shall be sentenced or committed to await trial  
13 shall receive and detain such person or prisoner in the same  
14 manner as if committed by any court sitting in the county  
15 where such jail is situated. And for the labor performed by  
16 persons charged with crime and awaiting trial, and before con-  
17 viction, in either of said jails, such person shall receive from  
18 the county wherein such person is imprisoned such sum of  
19 money as in the judgment of the commissioners of said county  
20 he had earned, deducting the amount of his subsistence and  
21 other things received from the jailer during such imprison-  
22 ment. And for labor performed in either of said jails while  
23 under sentence, over and above sufficient to cancel all the ex-  
24 penses of keeping any prisoner, he may receive such per cent.  
25 of the excess, not exceeding twenty-five, as in the judgment  
26 of the inspectors, hereinafter named, he ought to have, as a

27 reward for good conduct, industry, and improvement, to be  
28 awarded by them from time to time during imprisonment.

SECT. 8. There shall be paid to the county to which any per-  
2 son or prisoner may be sentenced, committed or removed from  
3 any other county by virtue of this act, by such other county,  
4 such sum as may be agreed upon by the county commissioners  
5 of said counties, for subsistence and detention, deducting the  
6 amount received for labor, and in case said commissioners do  
7 not agree upon the amount to be paid, representation may be  
8 made to the supreme court, or any justice thereof, of the facts,  
9 and the amount determined by such court or justice, either in  
10 term time or vacation.

SECT. 9. The present board of state's prison inspectors, with  
2 three others to be appointed and qualified in like manner by  
3 the governor, shall constitute a board of prison and jail in-  
4 spectors. Their powers and duties in regard to the state's  
5 prison and state's house of refuge for women, if one shall here-  
6 after be provided, shall be as now provided by law for the  
7 present board. Their powers and duties in regard to the jails  
8 aforesaid shall be to visit them once at least every three  
9 months, and to inquire into the management and conduct of  
10 the same, to give such advice in relation to the same as may  
11 be regarded by them useful and proper, to classify all pris-  
12 oners held under sentence in said jails, having regard to age,  
13 character and offences, and for this purpose may remove pris-  
14 oners from one of these jails to another to serve the remainder  
15 of the sentence, and may require of the keeper of said jails to  
16 keep a calendar, with such statistics in relation to their prison  
17 as may be deemed by them useful for future reference.

SECT. 10. Any officer of any county in this state qualified to  
2 serve precepts in criminal cases in the county where he resides,  
3 may serve any precept required by this act, whether such ser-  
4 vice is performed in whole or in part in one or more counties,  
5 and the processes shall be issued and directed accordingly.

SECT. 11. The keeper of the jail, in said several counties, shall  
2 keep a record of the conduct of each convict, and for every  
3 month it appears by such record that such convict has faith-  
4 fully observed all the rules and requirements of the prison,  
5 such convict shall be entitled to a deduction from his sentence  
6 according to and not exceeding the following rate and propor-  
7 tion : for a convict under sentence for two years, two days for  
8 each month of good conduct ; for three years or less, and more  
9 than two years, three days ; for four years, four days ; and for  
10 five years five days per month ; and for every day any convict  
11 shall be punished for disobedience of the rules of said jail a  
12 record thereof shall be made, and two days deducted therefor  
13 from any commutations to which he may be entitled.

SECT. 12. In all criminal cases in this state where the punish-  
2 ment as now provided by law may be imprisonment in the state's  
3 prison not exceeding five years, such punishment may be in-  
4 flicted by any court having jurisdiction of the offence or crime,  
5 in its discretion in either of the jails aforesaid.

SECT. 13. The county commissioners and sheriff of said several  
2 counties, shall jointly or separately, in the month of December  
3 annually, make a report of the prisons under their charge, em-  
4 bracing therein its moral, intellectual and financial condition,  
5 which report shall be published in some newspaper published  
6 in said county. And the inspectors shall make a report of the  
7 condition of all the prisons in the state, to the legislature in  
8 month of January annually.

SECT. 14. All acts and parts of acts inconsistent with this  
2 act are hereby repealed.

SECT. 15. This act shall take effect when approved by the  
2 governor.





STATE OF MAINE.

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IN SENATE, February 3, 1871.

On motion of Mr. FOSTER, laid on the table and two thousand copies ordered to be printed.

SAMUEL W. LANE, *Secretary.*