

MAINE STATE LEGISLATURE

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June 28, 1944

To Harrison C. Greenleaf, Commissioner of Institutional Service
From Abraham Breitbard, Deputy Attorney General

Subject - Parole from the State Reformatory for Men

In your memorandum of June 23, 1944, you ask for a ruling from this department, and the question is whether the Parole Board may, upon recommendation of the Superintendent of the State Reformatory for Men, grant to a person committed to that institution for the crime of rape a permit to be at liberty. This inquiry results from the exceptions contained in Chapter 294, P. L. 1939, which amends Section 26 of Chapter 147 of the Revised Statutes and makes the provisions relating to indeterminate sentence inapplicable to convictions for certain sex offenses, thus requiring in the excepted cases a sentence for a definite term, rather than a sentence providing for a maximum and minimum term. The effect of this amendment also was to deny parole to offenders convicted of these crimes under the provisions of Sections 25 to 43 of Chapter 147.

These provisions, however, are applicable to convicts sentenced to the state prison only. This is very clear from Section 25, which is the first section under the title "Indeterminate Sentences" and is as follows:-

"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." (Emphasis supplied.)

Sentences to the State Reformatory for Men are governed, however, by R.S. Chapter 152, Section 79, as amended by Chapter 1, §367, Laws of 1933; Chapter 223, §6, Laws of 1939; and Chapter 140, §1, Laws of 1941.

This section provides that when a male person within the prescribed ages is convicted by any court or trial justice of an offense punishable by imprisonment in the state prison or in any county jail or in any house of correction, the court may, instead of imposing the punishment provided by law for that offense, order his commitment to the Reformatory for Men. Said statute then provides:

"When a male is ordered committed to the reformatory for men, the court or trial justice ordering the commitment shall not prescribe the limit thereof, but no male committed to the reformatory as aforesaid shall be held for more than 5 years if convicted for a felony; nor for more than 2 years if convicted for a misdemeanor."

Thus, under this provision, unlike the provisions relating to indeterminate sentences to the State Prison, the court is not required to fix the minimum and maximum terms, but the maximum is fixed by that part of the statute which I have quoted.

The minimum likewise is provided by the statute, Laws of 1941, Chapter 140, Section 2, amended by Chapter 115, Laws of 1943. Under this section, the superin-

tendent of the Reformatory is required to classify each person committed thereto and keep a monthly record of the behavior and progress of the person committed. It then provides:

" Whenever the record of any such inmate is satisfactory to the superintendent, he may, in his discretion, recommend any inmate for a hearing before the parole board, but no inmate shall be paroled until he shall have served 6 months if convicted of a misdemeanor or 1 year if convicted of a felony, except that an allowance of 7 days for each month served from date of commitment may be granted by the superintendent whenever in his opinion the conduct of the person so committed justified such consideration. . . "

Under R. S. 1930, Chapter 182, amended 1933, Chapter 1, §370; 1929, c. 223, §6 and 7; 1941, c. 140, §3, provision is made as follows:

"When a person committed to the reformatory has been recommended for a hearing before the parole board by the superintendent, the parole board may in its discretion, after proper hearing, issue a permit for such person to be at liberty and may so release such person providing some suitable employment or situation has been secured for him in advance, and upon such other conditions as the parole board may prescribe. . . "

From the provisions quoted, it is to be noted that in the case of a felony, the maximum term that a person may be held is five years, but no inmate is to be paroled until, in the case of a felony, he has served one year. In prescribing the maximum and minimum term of a commitment, the generic term, "felony", is used. No specific crime amounting to a felony is excepted. Concerning parole, there is no limitation or restriction upon the exercise by the parole board of the right to hear and to issue a permit to be at liberty to persons charged with particular felonies. All persons "committed to the reformatory" may be recommended for hearing before the board.

I therefore advise you that the parole board under these provisions may in its discretion parole an inmate who has been convicted of any crime.

Abraham Breitbard
Deputy Attorney General

AB:c

11/26/44 I cannot agree with this conclusion. I think A.B. was pressed for time and did not give the question sufficient thought. F.J.C.