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Chapter 149.

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

Meaning of "conviction."—As naming the stage of a trial reached when a person pleads guilty, or by a jury is found guilty, "conviction" is used by many courts, and in this chapter, to express the state of the person before the conclusion of his case. That conclusion is the judgment of a court having final jurisdiction of the case. Donnell v. Board of Registration of Medicine, 128 Me. 523, 149 A. 153.

Sentences and Imposition.

Sec. 1. No person punished until convicted; costs.—No person shall be punished for an offense until convicted thereof in a court having jurisdiction of the person and case. When it is provided that he shall be punished by imprisonment and fine or by fine and costs, and in addition thereto, imprisonment, the court may in its discretion, after imposing sentence of fine and costs and imprisonment, place him on probation as to such imprisonment in accordance with the provisions of this chapter on condition that he pay the fine and costs, and in default of such payment, impose a sentence of imprisonment for not more than 6 months. Nothing in this section shall be construed in any way to affect the right of the court to place the respondent on probation as to both fine and cost and imprisonment. In all cases where a fine is imposed he may be sentenced to pay the costs of prosecution; and for violations of the provisions of sections 66, 68, 84 and 89 of chapter 61, and of sections 145 to 152, inclusive, of chapter 100, he shall be sentenced to pay such costs. (R. S. c. 136, § 1.)

Former provision of section.—For a case relating to a former provision of this section providing that a person "may be sentenced to either or both" imprisonment and fine, see State v. Sturgis, 110 Me. 96, 85 A. 474.

Stated in part in Wallace v. White, 115 Me. 513, 99 A. 452.

Cited in Cote v. Cummings, 126 Me. 330, 138 A. 547.

Sec. 2. General penalty.—When no punishment is provided by statute, a person convicted of an offense shall be punished by a fine of not more than $500 or by imprisonment for less than 1 year. (R. S. c. 136, § 2.)

Section governs punishment for escapes not otherwise provided for.—Except for escapes defined by statute and for which statutory penalties are provided, the punishment for criminal escapes is governed by the provisions of this section. Smith v. State, 145 Me. 313, 75 A. (2d) 538.

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 in the indictment and proved or admitted on 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, whether pardoned therefor or not, he may be punished by imprisonment in the state prison for any term of years. (R. S. c. 136, § 3.)

History of section.—See Jenness v. State, 144 Me. 40, 64 A. (2d) 184.

Section is constitutional.—This section does not contravene the fourteenth amend-

ment to the Constitution of the United States nor deny equal protection. Jenness v. State, 144 Me. 40, 64 A. (2d) 184; Ingerson v. State, 146 Me. 412, 82 A. (2d) 407.

Prior conviction must be alleged and proved.—Such incidental prejudice as there may be by reason of the statement of prior conviction is outweighed by the security of fundamental constitutional safeguards in requiring both allegation and proof of a prior conviction. Ingerson v. State, 146 Me. 412, 82 A. (2d) 407; State v. McClay, 146 Me. 104, 78 A. (2d) 347.

But need not be proved on trial if plea is guilty to indictment charging it.—A prison sentence imposed without formal trial upon a plea of guilty to an indictment charging a previous conviction is not erroneous because it requires the fact of previous conviction to be "proved or admitted on trial," for, by pleading guilty to an indictment, there is no necessity for placing a respondent on trial before a jury. Jenness v. State, 144 Me. 40, 64 A. (2d) 184. See also Ingerson v. State, 146 Me. 412, 82 A. (2d) 407.

Sec. 4. State prison sentence; imprisonment for misdemeanor.—Unless otherwise specially provided, all imprisonments for 1 year or more shall be in the state prison; and all for a less term, in the county jail or house of correction. When it is provided that imprisonment shall be in jail, the sentence may be for imprisonment there or in a house of correction; and it may be conditional that the convict shall pay a fine and costs, but that if it is not paid in 10 days, then he shall be imprisoned for not more than 6 months. (R. S. c. 136, § 4.)

Cross references.—See c. 137, § 41, re commitment of rogues, vagabonds, idle persons, etc.

Any crime that may be punished by imprisonment for one year or more is a felony. It is the punishment that may be imposed, not that which is imposed, that determines whether or not an offense is a felony or a misdemeanor. State v. Doran, 99 Me. 329, 59 A. 440; Smith v. State, 145 Me. 313, 75 A. (2d) 538. See c. 145, § 1.

And is an infamous crime.—A crime punishable by imprisonment in the state prison or penitentiary, whether the accused is or is not sentenced to hard labor, is an infamous crime. Butler v. Wentworth, 84 Me. 25, 24 A. 456.

Quoted in part in State v. Vashon, 123 Me. 412, 123 A. 511; Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882.

Stated in part in State v. Mayberry, 48 Me. 218; LeClair v. White, 117 Me. 335, 104 A. 516.

Cited in State v. Goddard, 69 Me. 181.

Sec. 5. Work-jail sentences.—When the punishment provided by law may be imprisonment in the state prison for 3 years or less, such punishment may be inflicted by the court, in its discretion, in any of the work-jails. (R. S. c. 136, § 5.)

Cross reference.—See c. 89, § 22, re county commissioners to provide for employment of prisoners.

Stated in Butler v. Wentworth, 84 Me. 25, 24 A. 456.

Cited in State v. Vashon, 123 Me. 412, 123 A. 511.

Sec. 6. Alternative sentences to work-jails; authority of inspectors, in case of incorrigible or dangerous convicts.—When a convict is sentenced to imprisonment and labor in any of the work-jails, the court or magistrate may in addition sentence him to the other punishment provided by law for the same offense, with the condition that if such convict cannot be received at the work-jail to which he is sentenced, or if at any time before the expiration of said sentence, in the judgment of the inspectors of jails, he becomes incorrigible or unsafe, they may order that he suffer such alternative sentence or punishment; and if said alternative sentence is to the state prison, the sheriff of the county where such convict is imprisoned shall forthwith, upon receiving the order of said inspectors, cause said convict to be conveyed to the state prison at the expense of the county where he was sentenced. (R. S. c. 136, § 6.)

Cross reference.—See c. 89, §§ 21, 22, re employment of prisoners in county jails.

This section is special and limited; and its very enactment emphasizes the fact that alternative sentences without statutory authority therefor are unlawful. State v. Sturgis, 110 Me. 96, 85 A. 474.

Sec. 7. Courts may sentence to any work-jail, nearest to county where offense committed; prison sentences include labor.—The superior court and any municipal court or trial justice, in the county where a work-jail is situated or in any county where there is no work-jail may, subject to the provisions of the following section, 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.)

Sec. 8. Commitment in county where convicted.—Any person sentenced by any trial justice or judge of any municipal 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.)

Sec. 9. Expenses of prisoners from other counties. — There shall be paid to the county to which a prisoner from any other county may be sentenced and committed, by such other county, such sum as may be agreed upon by the county commissioners of said counties for subsistence and detention, deducting the amount received for labor, and if said commissioners do not agree upon the amount to be paid, representation of the facts may be made to the superior court or any justice thereof, and the amount shall be determined by such court or justice, either in term time or vacation. (R. S. c. 136, § 9.)

Sec. 10. In misdemeanors, sureties to keep the peace required.—In addition to the punishment prescribed by law, the court may require any person convicted of an offense not punishable by imprisonment in the state prison, to recognize to the state, with sufficient sureties, in a reasonable sum, to keep the peace and be of good behavior for a term not exceeding 2 years, and to stand committed until he so recognizes. (R. S. c. 136, § 10.)

Cross reference.—See c. 144, § 1, re security to keep the peace.

Quoted in State v. Sturgis, 110 Me. 96, 85 A. 474.

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 and shall not be less than 6 months in any case. (R. S. c. 136, § 11. 1951, c. 92.)

Sec. 12. Persons subject to imprisonment for life excepted. — The provisions of sections 11 to 22, inclusive, shall apply to any person convicted of an offense the only punishment for which prescribed by law is imprisonment for life, providing such person has never been convicted of any other capital crime, but such person may be eligible to parole after serving 30 years' imprisonment. The provisions of sections 11 to 22, inclusive, shall not apply to any person convicted of an offense under the provisions of sections 10, 11 or 12 of chapter 130 or under the provisions of section 6 of chapter 134. Provided that in all other cases where the maximum sentence, in the discretion of the court, may be for

life or any number of years, the court imposing sentence shall fix both the minimum and maximum sentence. The minimum term of imprisonment thus fixed by the court shall not exceed ½ of the maximum term so fixed. (R. S. c. 136, § 12. 1953, c. 382.)

Sec. 13. Record forwarded to warden. — Whenever a person shall be convicted of a crime and sentenced to imprisonment pursuant to the provisions of sections 11 to 22, inclusive, 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. (R. S. c. 136, § 13.)

Sec. 14. Parole board to make rules and regulations; prisoners must serve minimum sentence.—The parole board may adopt such rules as it may deem wise or necessary properly to carry out the provisions of sections 11 to 22, inclusive, and may amend such rules at pleasure. Prisoners, under the provisions of said sections, shall be eligible to parole and may be paroled by the parole board only after the expiration of their minimum term of imprisonment with the deduction provided by law. (R. S. c. 136, § 14.)

Cross references.—See c. 27, §§ 1, 5, re supervision of institutions; c. 27, § 7, re parole board.

Time served on sentence subsequently vacated cannot be credited toward sentence for another crime.—Time served for one crime, on a sentence which has been vacated upon a writ of error, cannot be credited upon an independent sentence imposed on the conviction of another crime on a separate indictment where the latter sentence remains in full force and was to commence upon the expiration of the former. Smith v. Lovell, 146 Me. 63, 77 A. (2d) 575.

Sec. 15. Duration of parole.—At the time of granting parole to any prisoner the parole board shall determine the length of time the prisoner shall remain on parole, which time may be subsequently extended or reduced, but which shall not be more than 4 years in any case. (R. S. c. 136, § 17.)

Sec. 16. Clothing and transportation for paroled prisoners.—Whenever any prisoner is released from the prison, he may receive from the state clothing not exceeding $20 in cost and transportation to the place where he was convicted, or to his home, if within the state; and may receive cash not exceeding $25. (R. S. c. 136, § 18. 1953, c. 404, § 6.)

Sec. 17. Paroled or 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 released upon parole, or 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.)

Sec. 18. Prisoner on parole deemed serving his sentence; condition.—The prisoner paroled under the provisions of this chapter, while at large by virtue of such parole, shall be deemed to be still serving the sentence imposed upon him, and shall be entitled to good time the same as if confined in prison. Provided that whenever the prisoner so paroled shall have been committed to or confined in the prison from a county other than the county in which the prison is situated, it shall be made a condition of his parole that he shall not live or

remain in the county in which the prison is situated, without the express consent of the parole board, which consent may be granted or revoked by the parole board for cause shown at any time before such convict is finally discharged. (R. S. c. 136, § 19.)

Sec. 19. Prisoners on parole in legal custody of parole board; returned to prison.—Every prisoner while on parole shall remain in the legal custody and under the control of the parole board and shall be subject at any time to be taken back within the enclosure of said prison for any reason satisfactory to said board and full power to retake and return any such paroled prisoner to the prison from which he was allowed to go at large is expressly conferred upon the parole board whose written order shall be sufficient warrant authorizing all officers named therein to return such paroled prisoner to actual custody in the prison from which he or she was permitted to go at large. (R. S. c. 136, § 20. 1953, c. 404, § 8.)

Sec. 20. Prisoner violating parole considered escaped prisoner.—A prisoner violating the provisions of his or her parole and for whose return a warrant has been issued by the parole board, shall, after the issuance of such warrant, be treated as an escaped prisoner owing service to the state and shall be liable, after arrest, to serve out the unexpired portion of his or her maximum sentence. The length of service owed the state in any such case shall be determined by deducting from the maximum sentence the time from date of commitment to the prison to date of violation of parole and such prisoner shall forfeit any deduction made from his or her sentence by reason of faithful observance of the rules and requirements of the prison prior to parole or while on parole. This section shall not be construed to prevent time allowance by reason of faithful observance of the rules and requirements of the prison during the unexpired portion of such maximum sentence, or to prevent the re-parole of such prisoner in the discretion of the parole board. (R. S. c. 136, § 22. 1953, c. 404, § 9.)

Sec. 21. Crime by paroled prisoner while at large.—Any prisoner committing a crime while at large on parole or conditional release and being convicted and sentenced therefor to imprisonment at the state prison shall serve the 2nd sentence to commence from the date of the termination of the 1st sentence whether such sentence is served or annulled. (R. S. c. 136, § 23. 1953, c. 404, § 10.)

Sec. 22. Final discharge.—After any prisoner has faithfully performed all the obligations of his parole for the period of time fixed, and has regularly made his monthly reports as required by the rules providing for his parole, he shall be deemed to have fully served his entire sentence, and shall then receive a certificate of final discharge from the warden in whose custody he is. A copy of such final discharge shall be kept on file by the clerk of the parole board. (R. S. c. 136, § 24.)

Sec. 23. Power of governor to grant pardons not impaired.—Nothing in the 12 preceding sections shall be construed to interfere or impair the power of the governor to grant pardons or commutations of sentence; nor shall anything therein contained be construed to interfere with the rights of any person who may be serving out a term of imprisonment in any penal institution in this state by virtue of a sentence imposed under any law heretofore or now in force. (R. S. c. 136, § 27. 1953, c. 308, § 104.)

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

Probation.

Employment of sections on probation is discretionary.—The broad powers as to sentence inhering in a court of general jurisdiction were not diminished or curtailed by the passage of these sections on probation. They do not take from but add to the authority of the court. They afford a new method in the administration of criminal law, tending toward the reformation rather than the punishment of the convicted. Their employment, however, is discretionary. Welch v. State, 130 Me. 294, 113 A. 737; Cote v. Cummings, 126 Me. 330, 138 A. 547.

Sec. 24. Probation officers, appointment; tenure and compensation; special provisions for Cumberland and Androscoggin counties.—The governor, by and with the consent of the council, shall appoint in any county of the state where in his judgment such an appointment is advisable, 1 probation officer, who shall be a citizen in the county for which said appointment is made, and of good moral character, and shall hold office during the pleasure of the governor and council, receiving as compensation therefor such sums as the county commissioners shall fix, which shall be paid from the county treasury in equal monthly installments. The county commissioners of such county shall at their next session after such appointment by the governor, determine and fix the amount of such compensation, which shall not be diminished during the term of office of the probation officer, but may be increased if it seems just to the county commissioners to do so. In addition to such compensation, each probation officer shall receive monthly such sums as are reasonably and properly paid for expenses incurred in the performance of the officer's duty. Each probation officer shall on or before the last day of each month submit under oath to the county commissioners of such county an itemized statement of such expenditures. If in any county it seems to the governor and council necessary to have more than 1 probation officer, the governor, with the consent of the council, may appoint one or more associates, who shall have all the authority under the direction of the probation officer which such probation officer has, and who shall receive for compensation and expenses such sum as the county commissioners of such counties shall deem just and proper.

The county of Cumberland is expressly exempted from the preceding provisions of this section and nothing in this section shall affect or modify any law pertaining to the appointment of probation officers and their duties within and for the county of Cumberland, except as follows: at the expiration of the terms of office of the probation officer and assistant probation officer of the county of Cumberland, their successors shall be appointed by the judge of the municipal court for the city of Portland, and said appointments shall be approved by a justice of the superior court resident in Cumberland county or by the chief justice of the supreme judicial court.

The county of Androscoggin shall have 2 probation officers, one to be designated probation officer and one to be designated assistant probation officer; and the county commissioners for Androscoggin county shall pay the probation officer a salary of $3,300, annually, and shall pay the assistant probation officer a salary of $2,420, annually; and furthermore the probation officers for Androscoggin county shall be entitled to select a clerk or stenographer for the probation office, and the probation office, and the county commissioners shall appropriate the sum of $2,080, annually, for such clerk hire. Furthermore, the county commissioners for Androscoggin county shall provide suitable quarters in the county building for this office.

The county commissioners shall require the probation officer to give corporate surety bond to the county in such sum as the county commissioners shall approve, conditioned that he shall, during his term of office, faithfully perform all the duties of his office. (R. S. c. 136, § 28. 1945, c. 139. 1947, c. 317. 1951, c. 313, § 5. 1953, c. 278, § 7.)

See § 38, re exemption of Cumberland county from provisions of §§ 24-37.

Sec. 25. Authority and duties.—Each probation officer shall have the authority to perform the duties prescribed in sections 24 to 38, inclusive, and for the purpose of performing such duties is invested with all the authority necessary therefor. Such probation officers in each county shall attend the superior court during the times when persons convicted of crime are sentenced, and shall give to the court upon request such information with reference to any individual accused or convicted of crime as shall be in his possession. Such probation officer shall attend the sessions of other courts within his county having criminal jurisdiction as often and as continuously as the performance of his duties shall permit, and shall give to such other courts information of the kind above mentioned. (R. S. c. 136, § 29.)

See c. 146, § 5, re special probation officers for juveniles.

Sec. 26. Sentence continued, suspended, etc. and respondent in custody of parole officer; report.—When any person by plea of guilty, or upon trial, is convicted of any offense other than an offense punishable by imprisonment for life before any court having criminal jurisdiction, such court may in its discretion continue the matter for sentence, suspend sentence or suspend the execution of any sentence, to be done under the provisions of sections 24 to 38, inclusive; but nothing herein contained shall be held to take away the right of appeal from any respondent, or any right to have his case reviewed or retried under the provisions of law as they now exist. The court at or before the time for sentence shall inquire into the circumstances of the respondent and of his offense, and if the matter is continued for sentence, the respondent shall be placed in the custody and under the control of the probation officer in the county where such respondent has been convicted. Such sentence may be continued by the court indefinitely, or to a definite time, and in every instance the court may order the respondent to report to the probation officer at such times and places as the court shall designate, and shall cause a writing signed by the clerk or by the court, to be given to the respondent, showing such continuance for sentence, the time during which the same is continued and the times and places when the respondent is to report to such probation officer. (R. S. c. 136, § 30.)

Cross reference.—See note to c. 129, § 12, re writ of error available to petitioner on parole.

Quoted in part in Ex parte Mullen, 146 Me. 191, 79 A. (2d) 173.

Cited in State v. Jenness, 116 Me. 196, 100 A. 933; Cote v. Cummings, 126 Me. 330, 138 A. 547.

Sec. 27. Sentence suspended and respondent on probation; violation; sentence imposed in vacation.—The court may in its discretion, if the offense is within the jurisdiction of the court trying the cause, continue for sentence, suspend sentence for a definite period of time, or for an indefinite time not exceeding 2 years, and such respondent may be committed to the custody and control of the probation officer.

In all cases where the respondent is committed to the custody or control of the probation officer, the court shall fix the period of time of such probation and the terms and conditions thereof, and shall give to each respondent a writing showing the terms of his probation and the times and places when and where such respondent is to report to such probation officer. Whenever such respondent violates the terms of his probation, the probation officer shall forthwith report the same to the court which finally tried the cause or to any justice of said court in vacation. The respondent may at any time be brought by the probation officer before said court or any justice thereof in vacation, and the said court or said justice thereof in vacation, cause being shown, may order said probation ended and either impose the sentence if the cause has been continued for sentence, or order the respondent forthwith to comply with the original sentence or, if it shall be made to appear to the satisfaction of said court

or to any justice thereof in vacation, as the case may be, that the ends of justice and the best interests of the public, as well as the respondent, will be subserved thereby, may order that probation be ended and that the respondent be allowed to go without day. (R. S. c. 136, § 31.)

When an order of probation is revoked, the original sentence goes into effect forthwith, and cannot be made to take effect at a later time. State v. Jenness, 116 Me. 196, 100 A. 933.

Cited in Cote v. Cummings, 126 Me. 330, 138 A. 547.

Sec. 28. Sentence imposed and respondent in custody of parole officer; opportunity to pay fine.—If the offense of which the respondent is convicted is within the jurisdiction of the court trying the same, the court may in its discretion impose a fine or an alternative sentence of imprisonment and release respondent into the custody of the probation officer, with an opportunity to pay such fine and costs to the probation officer within a definite time. When such respondent pays such fine and costs or any part thereof to the probation officer, such officer shall give the respondent a receipt therefor. Such officer shall render, under oath, a detailed account of all fines and costs received and shall pay such fines and costs into the treasury of the county on or before the 15th day of the month following such collection. (R. S. c. 136, § 32.)

Cited in Cote v. Cummings, 126 Me. 330, 138 A. 547.

Sec. 29. Personal recognizance of parent of child under 17 years; custody and control of officers.—Whenever a child under the age of 17 years is arrested and charged with an offense other than a felony, or a crime which if committed by an adult would be a felony, the officer making such arrest may accept in lieu of bail, and without committing such child to any jail or police station, the personal recognizance in writing, without security, of the parent, guardian or other lawful custodian of such child to produce such child before the proper court or magistrate on the following day at a time and place to be specified in said recognizance; and thereupon such officer shall place such child in the care and custody of the person executing such recognizance, who, on failure to so produce such child pursuant to the terms of such recognizance, shall be liable to punishment by the court or magistrate as for criminal contempt. Similar recognizance may be taken by the court or magistrate for the subsequent production of such child at a time and place to be specified therein pending the final termination of the proceedings, and noncompliance therewith shall subject the person giving the same to the same punishment, or the court or magistrate may, pending final disposition of the case, order such child committed to the custody and control of any officer authorized to serve criminal process to be by him safely kept and produced in court or before said magistrate at the time appointed. (R. S. c. 136, § 33. 1947, c. 171.)

Stated in part in Richardson v. Dunn, 128 Me. 316, 146 A. 904.

Sec. 30. Child convicted of offense in custody of probation officer.—When any such child has been convicted of any offense other than an offense punishable by imprisonment for life, the court or magistrate having jurisdiction, instead of committing such child to confinement in any institution or ordering the payment of fine and costs, may place such child in the custody of the probation officer under suspension of such sentence, or a continuance of the same for a period of not more than 1 year. At any time within such year, if it appears to the court that justice requires it, said court or magistrate may cause such child to be brought into court and either impose sentence, if the case has been continued for sentence, or order such child to enter upon the execution of his sentence, if the execution of the same has been suspended. (R. S. c. 136, § 34.)

Sec. 31. Notice of arrest to parent, guardian or legal custodian of child, and to probation officer; records.—Whenever any child under the age of 17 years has been arrested for any offense and is confined in any jail or police station, the officer making such arrest shall forthwith notify the parent, guardian or legal custodian of such child of the fact of such arrest, and of the time and place where his trial is to be held. Such officer shall also notify a probation officer in his county of the fact of such arrest, and of the time and place of such trial. Any court having jurisdiction of the offense may, upon application of such probation officer, by an order in writing, cause such child to be forthwith placed in the custody of such probation officer pending the trial and final determination of said cause. The records of the arrest or detention of such child shall not be open to inspection by the public except by permission of the court. (R. S. c. 136, § 35. 1951, c. 147.)

Purpose of section.—This section was obviously enacted with a view of preventing children of tender years from being thrown into associations with adults confined in jail before convicted of any offense. Richardson v. Dunn, 128 Me. 316, 146 A. 904.

Failure of officer to notify parents does not deprive court of jurisdiction.—Failure to notify the parents by the officer making the arrest may be sufficient ground for a continuance by a magistrate acting according to the procedure at common law until notice to the parent, if it is deemed necessary, can be given. But such failure does not deprive the court proceeding according to the common law of jurisdiction of a criminal offense. Richardson v. Dunn, 128 Me. 316, 146 A. 904.

Sec. 32. Continuance without trial; child in custody of probation officer; discharge of respondent without trial.—When any child under the age of 17 years is brought before any court or magistrate for trial charged with any offense other than an offense punishable by imprisonment for life, the court may in its discretion continue such cause without trial from time to time, not exceeding 30 days at any one time, and release such child into the custody and control of the probation officer, who shall have authority to permit such child to remain in the home of such child if the same seems to him proper, or he may retain such child in his own custody if the same can be done without expense to the county or the state. If at any time it seems to the court just and proper to discharge any such respondent without trial, the same may be done, and no child so discharged nor any other person shall have any right of action against any officer or other person on account of any of the proceedings in such case. (R. S. c. 136, § 36.)

Sec. 33. Officer pro tempore. — In case of the absence of the probation officer at the time and place when any such child is so arrested or to be tried, the court having jurisdiction may appoint some discreet male or female citizen of the county a probation officer pro tempore for the purpose of that particular case, who shall perform his duties without compensation or expense, and such probation officer shall have all the authority to perform all of the duties of the probation officer under the provisions of sections 24 to 38, inclusive; but the authority of such probation officer shall cease when he shall have performed the duties with reference to that particular cause. (R. S. c. 136, § 37.)

Sec. 34. Record of commitment to custody of probation officer; if terms of probation violated.—Whenever any such child has been committed to the custody and control of any probation officer, the court or magistrate shall cause to be entered upon the records of such court the fact of such commitment and the terms thereof, and the court shall have authority to order such probationer to report to the probation officer at such times and places as the court in its order shall direct. If at any time it appears to the court that such probationer has violated the terms of his probation, or that justice requires it, the court may order such child brought before it and may summarily deal with such child as the law provides. (R. S. c. 136, § 38.)

Sec. 35. Authority of probation officer.—Any probation officer, having committed to his custody any child or other person, shall have the same authority with reference to the person of such child or other person as he would have were he surety upon the recognizance of such child or other person. (R. S. c. 136, § 39.)

Sec. 36. Continuance for sentence for purpose of restitution.—If any person commits an offense against another for which the latter would have a civil action for damages, and such damages do not exceed the sum of $20, the court trying such offender may in its discretion, if such offender is found guilty, continue the matter for sentence and commit the respondent to the custody of the probation officer for a definite period, within which time such offender may make restitution to the person injured. And if within such period such offender has made such restitution, the court at the expiration of such period may make such legal disposition of the case as seems proper to the court. (R. S. c. 136, § 40.)

Sec. 37. Investigation into school attendance. — All probation officers shall investigate as fully as may be and order the attendance at some school of all children between the ages of 5 and 16 years, and for this purpose such probation officer shall have all authority of attendance officers. (R. S. c. 136, § 41.)

See c. 41, §§ 89-97, re compulsory education.

Sec. 38. County of Cumberland excepted.—The county of Cumberland is expressly excepted from the provisions of the 14 preceding sections; nor shall the provisions of chapter 346 of the special laws for the year 1905 and of chapter 336 of the special laws for the year 1907, and acts amendatory thereof, be in any way thereby affected. (R. S. c. 136, § 42.)

Execution of Sentences.

Sec. 39. Clerk's minutes authority for officer to execute sentence. —When a convict is sentenced to pay a fine or costs, or to be imprisoned in the county jail or house of correction, the clerk of courts, as soon as may be, shall make out and deliver to the sheriff or some officer in court, a transcript of the minutes of the conviction and sentence duly certified by him; which shall be sufficient authority for the officer to execute such sentence. (R. S. c. 136, § 43.)

"Mittimus" defined.—The "mittimus" is only a transcript of the minutes of the conviction and sentence duly certified by the clerk. Breton, Petitioner, 93 Me. 39, 44 A. 125.

The clerk must make the mittimus to fit the case. It may be framed to serve as a capias as well as a mittimus when the situation so demands. Wallace v. White, 115 Me. 513, 99 A. 452.

But he has no power to control the effect of sentences imposed.—To determine which sentence shall be served first and whether one shall succeed the other is clearly a judicial act which the clerk has no power to perform. He can only certify to the order of the court. Breton, Petitioner, 93 Me. 39, 44 A. 125.

Sec. 40. Sentence in default of payment of fine and costs.—Whoever is convicted in any court or by a trial justice 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.)

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 warden

of the prison, requiring him to cause such convict, without needless delay, to be removed from the county jail to the state prison; the warden and 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 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.)

Convicts.

Sec. 42. Convict, unable to pay fine or costs, liberated. — Except when otherwise expressly provided, any convict sentenced to pay a fine or costs and committed for default thereof and for no other cause, who is unable to pay the same, may be liberated by the sheriff after 30 days from his commitment, by giving his note for the amount due to the treasurer of the same county, accompanied by a written schedule of all his property of every kind, signed and sworn to before the sheriff, jailer or any justice of the peace or trial justice, and the sheriff shall deliver the same to said treasurer, for the use of the county, within 30 days; and all convicts so committed may be placed at labor in the same manner as persons sentenced to imprisonment and labor. (R. S. c. 136, § 46.)

Cross reference.—See c. 150, §§ 11 and 12, re collection on notes issued in pursuance to this section.

History of section. — See Violette v. Macomber, 125 Me. 432, 134 A. 561.

The release under this section is a matter of discretion, not of right. Violette v. Macomber, 125 Me. 432, 134 A. 561.

This section does not require the notes to be negotiable. Bates v. Butler, 46 Me. 387.

Nor does it require notes to include cost of board.—This section, allowing convicts to give their notes for fines and costs, confers no authority to require such notes to include the expense of their board in jail, while confined under sentence of imprisonment. Bates v. Butler, 46 Me. 387.

Section applicable to married women and minors.—In terms, this section applies to any person convicted of a criminal offense, and in favor of personal liberty, there seems to be good reasons for applying it to married women and minors as well as to others. No reason is perceived why they should be excluded from its benefits. Bates v. Enright, 42 Me. 105.

But the notes by a wife are her contracts, and no action can be maintained upon them against the husband alone. Bates v. Enright, 42 Me. 105.

Note cannot be avoided on a plea of duress.—A note given by an imprisoned person to procure his discharge is not given under duress, and it cannot be avoided on that plea. Bates v. Butler, 46 Me. 387.

County treasurer may not indorse and transfer notes.—No authority is conferred upon the treasurer of the county to indorse and transfer such notes to another. Bates v. Butler, 46 Me. 387.

Cited in Wallace v. White, 115 Me. 513, 99 A. 452.

Stated in part in Rollins v. Lashus, 74 Me. 218.

Sec. 43. Notes lien on convict's real estate.—The note provided for in the preceding section continues a lien on all the maker's real estate until it is fully paid; and if judgment is rendered on it in favor of the county treasurer, the same proceedings may be had on the execution as in other cases of contract. (R. S. c. 136, § 47.)

Sec. 44. False schedule of property.—If a convict is convicted of knowingly and willfully making a false schedule, on oath, as to the nature or amount of his property, he shall receive no benefit from his liberation, but may be again imprisoned until the performance of the original sentence. (R. S. c. 136, § 48.)

Pardons and Commutation of Sentences.

Sec. 45. Notice to county attorney, 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 county attorney for the county where the case was tried at least 3 weeks before the time

of the hearing thereon, and 3 weeks' notice in some newspaper printed and published in said county; and if the crime for which said pardon is asked is punishable by imprisonment in the state prison, 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 him his necessary expenses for such attendance and a reasonable compensation for his 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.)

Sec. 46. When state prison sentence commuted to imprisonment in jail. — When a person is sentenced to confinement in the state prison, the governor with the advice and consent of the council may, if he deems it consistent with the public interest and the welfare of the convict, commute said sentence to imprisonment in any county jail, there to be supported at the charge of the state at an expense not exceeding the price paid for the support of other prisoners in said jail. (R. S. c. 136, § 50.)

Sec. 47. Governor may grant conditional pardons. — In any case in which the governor is authorized by the constitution to grant a pardon, he may, with the advice and consent of the council and upon petition of the person convicted, grant it upon such conditions and with such restrictions and under such limitations as he deems proper, and he may issue his warrant to all proper officers to carry such pardon into effect; which warrant shall be obeyed and executed instead of the sentence originally awarded. (R. S. c. 136, § 51.)

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

Sec. 48. Conditions under which convict again arrested. — When a convict has been pardoned on conditions to be observed and performed by him, and the warden of the state prison or keeper of the jail where the convict was confined has reason to believe that he has violated the same, such officer shall forthwith cause him to be arrested and detained until the case can be examined by the governor and council; and the officer making the arrest shall forthwith give them notice thereof, in writing. (R. S. c. 136, § 52.)

Sec. 49. If governor and council find that conditions violated, convict remanded to prison.—The governor and council shall, upon receiving the notice provided for in the preceding section, examine the case of such convict, and if it appears by his own admission or by evidence that he has violated the conditions of his pardon, the governor with the advice and consent of the council shall order him to be remanded and confined for the unexpired term of the sentence. In computing the period of his confinement, the time between the pardon and the subsequent arrest shall not be reckoned as part of the term of his sentence. If it appears to the governor and council that he has not broken the conditions of his pardon, he shall be discharged. (R. S. c. 136, § 53.)

Sec. 50. Officer, to whom warrant for pardon or commutation issued, to make return.—When a convict is pardoned or his punishment is commuted, the officer to whom the warrant for that purpose is issued shall, as soon as may be after executing the same, make return thereof, under his hand, with his doings thereon, to the office of the secretary of state; and he shall also file in the clerk's office of the court in which the offender was convicted an attested copy of the warrant and return, a brief abstract whereof the clerk shall subjoin to the record of the conviction and sentence. (R. S. c. 136, § 54.)

Fugitives from Justice.

Sec. 51. Reward for arrest and return of escaped prisoners and fugitives from justice.—Whenever a prisoner convicted of or charged with a capital crime or other high offense escapes from prison; or there is reasonable cause to believe that a person who is charged with such offense and has not been apprehended therefor cannot be arrested and secured in the ordinary course of proceedings, the governor may, upon application in writing of the attorney general or county attorney for the county in which such offense was committed, and upon such terms and conditions as he deems expedient and proper, offer a suitable reward, not exceeding $1,000, for the arrest, return and delivery into custody of such escaped prisoner or fugitive from justice; and upon satisfactory proof that the terms and conditions of such offer have been complied with, he may, with the advice and consent of the council, draw his warrant upon the treasurer of state for the payment thereof. (R. S. c. 136, § 55.)