REPORTS OF JUDICIAL COUNCIL 1954

PROCESS BY INDICTMENT

PARDON PROCEDURES IN NEW ENGLAND

MAINE COURT SYSTEM IN RELATION TO JUVENILES

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Legislative Research Committee

JUNE, 1955

FOREWORD

In 1935 a law was enacted providing for the establishment of a Judicial Council "for the continuous study of the organization, rules and methods of procedure and practice of the judicial system of the State..." (Revised Statutes, Chapter 113, Sections 195-197, inclusive.) Not until April 1954, however, was the Council activated by Governor Burton M. Cross' appointment of the following members:

Chief Justice (Chairman Ex Officio)	Raymond Fellows
Attorney General	Alexander A. LaFleur
Superior Court Justices	Francis W. Sullivan
	Harold C. Marden
Municipal Court Judges	Edward I. Gross
	Frank E. Southard, Jr.
Probate Judge	Armand A. Dufresne, Jr.
Clerk of Courts	George A. Cowan
Members of the Bar	George A. Barnes
	Leonard A. Pierce
Laymen	Charles F. Phillips
	Doris P. White
	Orren C. Hormell

At Governor Cross' suggestion a study of the indictment process was undertaken together with studies of the court system in relation to juveniles and pardon procedures. In view of the continuing interest in the work of the Judicial Council the reports filed with the Governor in January 1955 are here reproduced by the Legislative Research Committee at Legislative request.

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PROCESS BY INDICTMENT

"To the Honorable Raymond Fellows, Chairman: Judicial Council:

Dear Mr. Chief Justice:

Your committee for the study of process by indictment to expose or refute any prevalent inability or failure of legal prosecutors in our State validly to indict respondents and any undue formalism upon the part of our courts, herewith reports its efforts and their results.

It is submitted that a consideration of indictments found and returned and their fate from 1950 to date is adequate for Council purposes and public enlightenment. 1950 is chosen as a time reasonably antedating those unusually publicized tensions of 1951 and thereafter when there were said to be crime waves obtaining. Indictments rendered during that span of four years should reveal the existence or absence of justified need for reform.

The Clerks of Court of our sixteen counties supply us with the following data:

County	Number of Indictments	Number Quashed
Androscoggin	271	4
Aroostook	411	1
Cumberland	1224	4
Franklin	84	1
Hancock	144	2
Kennebec	347	0
Knox	164	0
Lincoln	63	0
Oxford	171	6
Penobscot	595	0
Piscataquis	46	2
Sagadahoc	105	0
Somerset	240	3
Waldo	296	0
Washington	171	0
York	493	2
	4825	25

Percentage of quashed indictments .0051

1 out of each 193 indictments returned was quashed.

In the instance of Cumberland County where 4 indictments were quashed, all of the respondents either pleaded guilty or were found guilty upon other, contemporaneous and related indictments and were sentenced.

In Androscoggin County where 4 indictments were quashed it would appear that such defects as an insufficient allegation of the dates of the alleged crimes and a typographical error were factors.

In Franklin County one indictment was invalid because of duplicity.

In Hancock County it is not expressly stated upon the record what were the specific defects in the two quashed indictments.

In Oxford County 4 indictments for alleged perjury were rejected because the indictments disclosed upon inspection that the testimony said to have been perjured were "not material." The record does not state why the other 2 indictments were quashed.

In Piscataquis County 2 indictments for alleged night hunting were nol prossed because "offense alleged is improperly stated."

In Somerset County 3 indictments against the same respondent for alleged embezzlement were quashed because of the "insufficient allegation of the property embezzled." It is submitted that the failure to include public officers and municipalities in the list enumberated in R. S. 1944, Chapter 119, Section 8, makes drafting a valid indictment

of a public officer under R. S. Chapter 119, Section 7, sometimes difficult.

In York County the record does not state the specific reasons for quashing 2 indictments.

An examination of Maine Law Reports, volumes 145 through 150, page 149, reveals that, from 1950 to date, 10 indictments were adjudged. Of those 10 indictments 7 were pronounced valid and 3 fatally defective. As to the latter 3, one did not recite by what authority an alleged jail escapee had been committed to jail, one failed to negative the fact that the gambling of an alleged gambler was justified under the legalized pari-mutuel wagering law of Maine, and one failed to identify the particular proceeding or inquiry at which alleged perjury had been committed.

Your committee feels that this statistical survey establishes clearly that indictments are neither so difficult to draw nor in fact so badly drawn as to be a serious problem in the administration of criminal justice. The percentage of invalid indictments is remarkably low.

There is readily obtainable throughout Maine a sufficient quality and quantity of legal forms for the proper composition and draftmanship of the greater part of indictments returned by our Grand Juries. Any prosecutor may obtain reliable precedents for his guidance with slight industry and diligence. There are, and understandably so, many instances where considerable pains and talent are demanded in the description of an alleged criminal offense. We believe that our prosecuting

attorneys have acquitted themselves quite well in the light of the foregoing record.

Indictments for the most part are employed for the prosecution of major crimes or felonies. Felonies are usually stoutly defended by competent defense counsel. Our courts are sensitive to felony charges and properly so. The deterrence of crime by the exemplary punishment of felons is a dire necessity for the good order of the State and of the communities of Maine. It is the glory of the State of Maine and of the United States of America, however, that individual, natural rights are cherished as God-given and "unalienable." Our philosophy of government and our Federal and State Constitutions so demand. Our courts, then, are and always have been meticulous in demanding clear and concise exposition of the charge of crime made against an indicted respondent to the end that he shall have full apprisal of his alleged wrongdoing and that the record of the case beyond preadventure will reveal, against all possibility of any future harassment, of what, precise crime he was convicted or acquitted. The courts can demand no less. The burden resultingly required of prosecutors is not too difficult or by any means impossible. Our Law Court has succinctly expressed the reasonable exigencies of the function, as follows:

> "A defendant has a constitutional right to know the nature and the cause of the accusation from and by the record itself. The facts must be stated with certainty. The description of the criminal offense charged in the indictment must be full and complete. Every fact or circumstance

which is necessary for a prima facie case must be stated. The indictment must charge a crime either under the statute or at common law. An indictment should charge a statutory offense in the words of the statute or in equivalent language. If no crime is charged, no lawful sentence can be imposed."

The indictment must satisfy "fully the requirement of notice to the respondent of the exact crime with which he is charged there emphasized and the additional one of security for him against a later prosecution for it, whether acquittal or conviction results."

"When an indictment employs----------language which makes clear and unambiguous the offense ----------charged, -------we are of the opinion that such indictment is sufficient and should not be quashed."

We conclude that our survey completely refutes any suspicion there may have been that the drafting of indictments has become impossibly technical, or that our prosecutors do not in general draft indictments meeting the required standards. While perhaps, as in the case of the embezzlement statutes noted, improvement may be made in some details of criminal pleading, we find no serious defects in the indictment process. In view of the tremendous values involved and some innate difficulties natural to criminal indictment, the record for the period entertained is very creditable.

Respectfully submitted,

(SIGNED)

(ARMAND A. DUFRESNE, JR., CHAIRMAN)

(CHARLES F. PHILLIPS)

(FRANK E. SOUTHARD, JR.)

(FRANCIS W. SULLIVAN)

PARDON PROCEDURE IN NEW ENGLAND

A visit to each of the New England State Capitols and a study of the pardon procedures bring out differences not suggested by a study of the various State Constitutions and statutes involved.

For much of the procedure in each State it may be said that informality is the rule in asking for a pardon. However, there are differences to be noted in the dispositions of the requests, the mode of consideration and authority to grant, as well as the characters of the pardons which are granted.

While there are common grounds and procedures in some States, such as the authority lying with the Governor and his Executive Council, as in Maine and Massachusetts, these are but parts of a larger picture which upon closer application shows more of difference than of similarity.

In Maine, petition or request may be informally initiated. Such request is followed by a formal petition on a form from the office of the Secretary of State. With the petition form the Secretary furnishes a page of printed instruction and the form for notice to be given in a paper printed in the county where the petitioner was convicted. The petitioner must have the notice printed and accompany his petition with a certified copy of the indictment and record of conviction and sentence.

Hearing, in Maine, is before the Governor and his full Council of seven members. Pardon is granted by the Governor, "with the advice and consent of the council". Statute authorizes full pardons and conditional pardons. The latter are in practice seldom used. Too seldom, some would say. When pardon is from the State Prison, as is usually the case, the Warden and the State Parole Officer furnish most of the information concerning the petitioner at the pardon hearing. The petitioner may appear with his counsel or by himself. While the Governor and Council are authorized to have the County Attorney of the county of conviction present, this is not commonly done. The Attorney General is counsel for the Executive Department, viz: the Governor and Council, but customarily is not present at these hearings to take any part. A statement may be had from the sentencing Justice of the Superior Court when desired by the Governor and Council.

In comparing the procedure of Maine with that of the other New England States, two things stand out to be noticeable:

One. The precautionary measures for screening the petit'ners are noticeably greater in some other States, probably all other States, in New England.

Two. The pardons granted in the other States are weighted down with conditions that require good behavior after receipt of the pardons.

In Massachusetts, Pardons are granted by the Governor and Council, as in Maine; but the hearing is before the Lieutenant Governor and a committee from the Council. Their recommendations are not binding on the Governor and Council, who may deny or grant pardons in their discretion.

Where the petitioner is serving sentence in the state prison, the Attorney General, as well as the District Attorney, is notified and may appear or be represented at the hearing.

Procedure is by a formal application by the petitioner to the Governor. This is transmitted by the Governor to the Secretary of the Governor's Council. The sub-committee of the Council, presided over by the Lieutenant Governor, hears the evidence.

1. The Department of Correction recommends for or against the proposed pardon;
2. Then the District Attorney recommends;
3. The recommendation of the Attorney General is had.

If 1 and 2 recommend, the Attorney General does likewise. If both oppose, he opposes. If there is variance between 1 and 2, the Attorney General acts independently, without further research or inquiry and recommends or opposes in his discretion.

Then the Committee of the Council reports favorably or not to the Governor.

If a pardon is granted, it may be with such conditions as the Governor may impose.

In Rhode Island, where there is no Executive Council, the pardoning power is in the hands of the Governor, by and with the advice and consent of the Senate. The Governor recommends all pardons to the Senate, he having acted favorably upon them. They are then referred to a Senate Committee which reports them back either favorably or unfavorably. The Attorney General is not directly concerned, but is called in re pardons.

The statute authorizes conditional pardons, stating that the pardons shall comply with and be subject to such terms and conditions as may be imposed by the Governor.

It is peculiar to Rhode Island that a pardon once granted by the Governor is not effective unless and until it shall thus have ratification by the State Senate. Pardons recommended by the Governor to the Senate are referred to a Senate Committee, which reports them back to the Senate, where final action is taken. At the Committee hearings use is made of the State Parole Board for the necessary information concerning the petitioner and his prospects of obtaining employment and of behaving after his discharge from prison. In practice, the pardons granted are conditional and the pardonee still reports to the Parole Board.

The five-member committee of the Senate would not consider a full pardon for a murderer, but most others are full pardons.

Violations of the conditions imposed have been noted in very few cases.

In Vermont, parole is the rule and pardon is the exception, Conditional Pardon being the same as parole.

In practice, during pardon hearings there are six (6) representatives of State institutions present with the Governor, assisting:

1. The Governor's "Secretary of Civil and Military Affairs", who is the Secretary in his office;

2, 3 and 4. The Chairman and the two other members of the Board of Institutions;

5. The Commissioner of Institutions;

6. The Director of Probation and Parole.

The unconditional pardon is exceptionally rare, almost unknown, in Vermont. The director of Probation and Parole (now John V. Woodhull) says it is hardly conceivable that an unconditional pardon would be granted except it be clearly shown that the conviction was obtained by mistake or a like reason. If the conditional pardon is terminated by violation of its provisions, an executive warrant is used within ten days of apprehension and the time on parole is lost to the prisoner. There is no forfeiture of good time served before parole. The printed form for conditional pardon is used and there are no other printed forms used.

The case of each prisoner is automatically brought up for consideration for conditional pardon as his good time reduces his sentence to the proper time in advance of minimum sentence. The Director's position is that the Court's sentence should be fully served unless found to be in error as by mistake.

The Vermont statute recites to the effect that pardons are granted by the Governor and there is no board, but the Governor may ask three Judges of the Supreme Court to sit with him.

The Governor is given the services of a pardon attorney or other official to aid him in exercising the pardoning function. This officer's duties are to perform the clerical duties connected with the filing of applications and compiling the required papers for each case and also to make investigations of the facts.

The Secretary of State, in Vermont, has nothing to do with pardons.

There are five Judges on the Supreme Court.

The pardoning power is constitutional.

Deputy Attorney General Stafford says that the Attorney General is seldom called in these proceedings.

It is interesting to note that, in Vermont, when a trial by jury is desired in any case cognizable by a Municipal Court, the previously prepared panel of jurors is resorted to and (sometimes the next day) a jury trial is held in that same court.

In the Superior Court, where felony cases are heard, three judges sit en banc, a legal member presiding and two non-legal members.

While the statute allows the Governor to have not more than 3 judges of the Supreme Court sit in with him in pardon cases, that method is very seldom, if ever, used.

Pardons are granted by the Governor alone.

There is no Executive Council in Vermont.

Every town in Vermont is represented by its member in the House of Representatives.

In Connecticut, the practice is different from that of any other of the New England States. The Connecticut statute provides: "The governor, a judge of the supreme court of errors to be designated for that purpose by the judges of that court, and four other persons, one of whom shall be a physician, shall constitute the board of pardons." Jurisdiction is vested in the Board of Pardons, on which all members must concur for affirmative action to be taken. The power to grant pardons in Connecticut is not constitutional, but statutory. The Board may fix by rule its procedure. Pardons may be conditional or absolute.

This system has been used since 1883. The conditional pardon is the one usually granted. Upon a conditional pardon the pardonee is remanded to the Board of Parole.

The Attorney General in Connecticut handles only civil business for the State; but Attorney General Beers, after examining the pardon law, called in Judge Vine R. Parmalee of West Hartford, Clerk of the Board of Pardons, who came in and went over procedure in Connecticut. Judge Parmalee sees no reason for granting an unconditional pardon except conviction was in error. He emphasizes that unanimity of the Board is important and necessary for several reasons, including who is for or against and to prevent "rigging" by a few members in combination. Judge Parmalee has been on the Board since 1925. Justice Inglis was the Supreme Court member on the Board until recently, when he was named Chief Justice.

The Board of Pardons has no office of its own. It sessions on the first Mondays of May and November and at other times upon call.

New Hampshire's Constitution of 1776 made no provision for pardons. By statute, pardons are granted by the Governor and Council. The Revised Statutes of New Hampshire, 1942, provide: "On all petitions to the Governor and Council for pardon or commutation of sentence written notice thereof shall be given to the state's counsel, and such notice to others as the governor may direct;" and the prosecuting officer may be required to furnish a concise statement of the case as proved at the trial and any other facts bearing on the propriety of granting the petition. Commutation of death sentences and other commutations are handled like pardons.

Pardons may be conditional and in practice usually are.

Pardons are first considered by the Prison Trustees. On this board are 7 Trustees appointed by the Governor and Council for terms of five years. The Governor and one Councilor designated by the Governor are members Ex Officio. The actual hearings are before the Governor and Council. The Board of Prison Trustees, when it thinks a pardon is in order, allows a hearing to be had. The result is largely foreseeable, as the case has been considered by the Board, on which the Governor and a member of the Council sit in an Ex Officio capacity. The conditional pardon is used in most cases, the conditions tailored to fit the case. No printed forms except the pardon itself

are used. The Attorney General says the Board of Trustees of the State Prison will not recommend for a hearing unless a pardon is deemed proper.

Hearings are public and the press is present.

A recommendation is asked of the Attorney General, but such is usually not given, he taking no part for or against.

New Hampshire has had the same procedure for many years.

The Attorney General attends all hearings for pardon. It is customary that upon a hearing for a pardon advice is had from the prosecuting County Attorney and the trial Justice, if they be living and available.

NOTE: This is a copy of the general form used in N. H. It may be varied in individual instances where believed necessary by Governor & Council.

THE STATE OF NEW HAMPSHIRE

....Is held in the State Prison upon a sentence of not less than ....nor more than ....years:

Now, therefore, the Governor and Council of this State, by virtue of the authority conferred upon them by the Statutes of this State, do issue to him this Conditional Pardon, effective .... to be at liberty during the unexpired term of his sentence, to wit; .... from said date, unless before its expiration, said Conditional Pardon shall be revoked or become void. The person to whom this Conditional Pardon is issued shall observe the following terms and conditions:

TERMS AND CONDITIONS GOVERNING PRISONERS ON CONDITIONAL PARDONS

1. He shall continue to be legally in custody of the Parole Officer of the State Prison.
2. He shall not lead an idle or dissolute life.
3. He shall continue to be employed unless incapacitated by mental or physical disability.
4. He shall obey the laws of the State wherein he may reside or happen to be.
5. If he show himself, by vicious life, irresponsible behaviour or criminal actions, unfit further to be at liberty, or if he shall again be convicted in any court in any State, of crime committed after his release on Conditional Pardon, said Conditional Pardon may be revoked and he may be apprehended and returned to State Prison.
6. Should complaint be made by the State Parole Officer that the conditionally pardoned prisoner is abusing his liberties, the Governor with advice of the Council, may impose such rules of conduct as he deems advisable, and the prisoner shall obey the same.
7. He shall not leave the State without permission of the State Parole Officer.

The violation of any of the above terms or conditions shall make void this Conditional Pardon.

Dated at Concord this ... day of ..., 19 .

By His Excellency, the Governor, _____ Governor
with the advice of the Council

_____
Secretary of State

Conclusion. If it be desired that change be made in Maine along the line pursued by any other of the New England States, experience would seem to suggest a tightening up in the granting of unconditional pardons, making such releases conditional in such manner as to bind the pardonee to good behavior, at least while his sentence is running.

Likewise stressed may be the necessity of obtaining information warranting a pardon from those officials who had opportunity to note his behavior since sentence and recommendation by non-officials having no official touch with the petitioner.

RECOMMENDATION

It is recommended that there be created a Pardon Hearing Board of five members, for five-year terms, one, after the first staggering period of one-, two-, three-, four-, and five-year appointments, to expire each year, membership to consist of a psychiatrist, a physician, a member of the Supreme Judicial Court, and two other members, all to be appointed by the Governor with the advice and consent of the Council; such board to be authorized to issue summonses, compel attendance and hear the witnesses upon hearings for pardons or commutations of sentence and report their findings to the Governor and to the Attorney General, whereupon it shall be the duty of the Attorney General to recommend to the Governor and Council whether or not a pardon or commutation of sentence ought to issue and, if so, on what conditions. Thereafter, the Governor and Council to issue or withhold the requested pardons or commutations of sentence as heretofore.

(Signed) ALEX. A. LaFLEUR
Attorney General of Maine

(Signed) NEAL A. DONAHUE
Ass't Att'y Gen'l.

MAINE COURT SYSTEM IN RELATION TO JUVENILES

Report to Governor Burton M. Cross and to the Governor's Commission on the Maine Court System, with special emphasis on the juvenile problem.

Objectives to be arrived at in the reform and reorganization of the Court System in relation to Juveniles:

Five Areas:

1. Prevention
   a. Adequate reclamation.
   b. Early detection of symptoms.
   c. Adequate social service in pre-delinquent stages. Best center is the school social service. Portland has engaged one such worker for the year 1954-55.
2. Intelligent apprehension of means of caring for pre-delinquents and delinquents.
   a. Special Juvenile officer on the police force. Fred Lanigan is the present Juvenile Officer on the police force in Portland.
3. Constructive detention.
   a. Juveniles detained pending hearing should not be jailed unless absolutely necessary. Children's homes and social agencies should be used as custodial organizations pending court hearings.
   b. Set aside an absolute separate section for juveniles.

c. Don't confine juveniles unless it is absolutely necessary.

4. Court procedure should be geared to the social aspects of delinquency.

5. Adequate Treatment facilities should be provided.

   a. Probation.

   b. More extensive creation and use of the well-established social agencies which have proven effective in many states.

   c. Mental hygiene facilities, psychiatrists, etc.

   d. Municipal Courts should be allowed funds for psychiatric examination and report of delinquents; given authority to utilize the department of Child Health and Welfare for case study and report on delinquents before the court or to employ a duly accredited and approved social agency to make such a study.

Problems to be given careful consideration:

1. Extent to which the court system for juveniles can be made uniform and statewide.

2. Possibility of joining counties into districts for hearing delinquent cases.

3. Should generally approved qualifications be required of probation officers as a basis for appointment? Since 1940 the chief probation

officer in Cumberland County is required to be qualified by professional training to work with juveniles. In all other counties the only qualification required by law is "good moral character."

4. Should counties having small total population make use of probation officers of neighboring counties.

Significant Facts Regarding the Maine Juvenile Situation.

1. In Cumberland County the probation officers are appointed by the Municipal Court Justice with the approval of the Resident Supreme Court Justice for the County, while in all other counties they are appointed by the Governor.

(Signed) Leonard A. Pierce
Doris Pike White
Orren C. Hormell
Edward I. Gross