636.06 SALARIES

HISTORY. 1899 c 154 s 7; 1903 c 270 s 6; 1905 c 321 s 3; RL 1905 s 5501; 1907 c 342; 1913 c 205 s 4; GS 1913 s 9390; 1919 c 350 s 1; 1921 c 336 s 13.

636.07 CARE AND CUSTODY OF MINORS

HISTORY. 1858 c 81 s 1; PS 1858 c 119 s 35; GS 1866 c 120 s 7; GS 1878 c 120 s 7; Penal Code s 19; 1893 c 147 s 19; GS 1894 s 7435; 1903 c 387 s 1, 2; RL 1905 s 5502; GS 1913 s 9392; 1917 c 275 s 1.

The adjudication of a juvenile court that a child is delinquent shall in no case be deemed a conviction of crime; but the court may in its discretion cause an alleged delinquent child of the age of 12 years or over to be proceeded against in accordance with the laws that may be in force governing the commission of and punishment for crimes and misdemeanors, or for the violation of municipal ordinances, by an order directing the county attorney to institute such prosecution as may be appropriate. Section 636.07 requires that the officer having charge of a minor delinquent under the age of 18 years shall provide a place of confinement separate from that wherein are grown-up prisoners and section 641.14 provides that no minor under 16 years of age shall be kept in the same room with other prisoners. Children over 12 years of age are presumed to be responsible for their acts and if convicted of a crime and in the absence of a legislative enactment prescribing or limiting the punishment, the punishment prescribed may be imposed upon them the same as upon adults. OAG July 7, 1953 (144-B-1).

636.09 PROBATION OFFICER IN RAMSEY COUNTY

HISTORY. Amended, 1949 c 61 s 1.

636.16 CONTINGENT FUND, EXPENSES

HISTORY. 1923 c 289 s 8; 1939 c 362 s 1; 1949 c 181 s 1; 1951 c 182 s 1.

The travel expenses of a deputy probation officer payable out of the probation officer's contingent fund need not be approved by the county board prior to the making of the trip. The approval of one judge on the claim is sufficient. OAG Aug. 6, 1952 (268-E) (104-B-8).

636.20 SALARIES, RAMSEY COUNTY

HISTORY. 1923 c 289 s 12; 1927 c 420 s 3; 1929 c 380; 1931 c 257; 1935 c 190; 1939 c 362 s 2.

CHAPTER 637

INDETERMINATE SENTENCES, PAROLES

637.01 TERM OF SENTENCE

Indeterminate sentence and paroles. 31 MLR 710.

Validity of banishment as a provision or part of a sentence. 31 MLR 742.

Sentence and release of youthful offenders. 34 MLR 532.

Mitigation of punishment. 35 MLR 151.

Petition for writ of habeas corpus based upon the same set of material facts held insufficient to justify issuance of writ in previous decision of supreme court should be quashed and appeal from order of district court denying petition should be dismissed. Where petitioner had served substantially less than the minimum pe-

riod of imprisonment required by sentence imposed under indeterminate sentence law irrespective of any increased punishment for prior convictions, petition for writ of habeas corpus on ground of alleged invalidity of such increased punishment was premature. Shaw v Utecht, 232 M 82, 43 NW(2d) 385.

Where, in imposing sentence, the judge allowed a prisoner credit on the sentence for the 60 days he had "served" in the county jail, the word "served" is equivalent to time spent in jail while awaiting trial and, as such, is allowable. OAG Sept. 23, 1947 (341-K-10).

Even though partly executed, a court which has imposed a sentence may reduce it during the same term of court in which it was imposed. OAG Aug. 22, 1952 (341-K-9).

A letter from the judge that a prisoner should be given credit for time spent in jail will not supersede the sentence pronounced by the court. OAG Sept. 27, 1952 (341-K-10).

Where the sentence of one who was serving a life sentence was, by the board of pardons, commuted to 50 years, the prisoner was made eligible to parole. OAG Aug. 22, 1947 (328-A-7).

637.05 BOARD; CHAIRMAN, COMPENSATION

HISTORY. 1911 c 298 s 5; GS 1913 s 9272; 1931 c 161 s 3; 1949 c 739 s 18; 1951 c 713 s 35.

637.06 BOARD; POWERS, LIMITATIONS

HISTORY. Amended, 1951 c 682 s 1.

Procedural aspects of the Youth Conservation Act. 32 MLR 471.

The state board of parole has authority to grant a final discharge of convict, but until then, the board retains control and legal custody over the convict who remains subject to the board's orders and to reincarceration at any time in its discretion. State ex rel v Whittier, 226 M 356, 32 NW(2d) 856.

Until the state board of parole grants a final discharge to a convict the board retains legal custody and control over the convict and where the board merely relinquishes control during the time the inmate of a state reformatory is in military service, the convict remains subject to the board's order and the board may revoke the parole and reincarcerate the convict at any time in its discretion. The relinquishment of control and supervision permitting the convict to enter military service is not a final discharge. State ex rel v Whittier, 226 M 356, 32 NW(2d) 856.

A parole is a penological measure for disciplinary treatment of prisoners capable of rehabilitation outside of the prison under which the convict remains in legal custody of state agents subject at all times to be returned to penal servitude for cause. A pardon completely frees the offender from control of the state and relieves him from control of the state and all legal disabilities resulting from his conviction. State v Meyer, 228 M 286, 37 NW(2d) 3.

Where a prisoner, after commutation of sentence on condition that he lead a law abiding life, participated in a robbery, the board of pardons without notice and without a hearing revoked the commutation of sentence, the prisoner was not entitled to declare his release by habeas corpus. Guy v Utecht, 229 M 58, 38 NW(2d) 59.

In extradition proceedings the legality of the revocation of a parole is a question for the paroling state, that state alone having the right to construe its laws. State ex rel v Ryan, 235 M 161, 50 NW(2d) 259.

Where a convict has been convicted of five felonies, four of them having been committed prior to his sentence for murder, he does not become eligible for parole until he has served 35 years, less the diminution and then only by unanimous consent in writing of the members of the board of pardons. OAG Oct. 25, 1951 (328-A-6).

A convict convicted of five felonies, serving a long term for murder, would not become eligible for parole until he had served 35 years less diminution which would be allowed for good conduct. OAG Oct. 26, 1951 (328-A-6).

Commutation by the board of pardons of a life sentence for murder to a sentence for years makes the inmate eligible for parole. OAG Aug. 22, 1947 (328-A-7).

If a parolee from the state prison or reformatory is ordered by the board of parole to be retaken and placed in custody, the expenses therefor must be paid out of the parole board fund, and the sheriff must direct his bill for services and expenses to the board. OAG March 28, 1951 (390-C-9).

637.07 CREDITS FOR PRISONERS, RELEASE

Classification of offenders on the basis of age for the purpose of treatment after conviction under the Youth Conservation Act is reasonable, and the Act does not violate constitutional guarantees of due process of the law and equal protection of the laws, although it deprives the youthful offenders of right to credits for good conduct available under the statute, and vests the power to parole such offenders in the commission instead of the state board of parole. State v Meyer, 228 M 286, 37 NW(2d) 3.

Where a convict has been granted a commutation of his sentence, unless the commutation discloses that the conditions imposed shall extend beyond the expiration of the convict's sentence, the civil rights of the convict may be restored by the governor after the expiration of the sentence on receipt by the governor of the certifications required by law. If the commutation provides that the conditions imposed are to continue after the expiration of the original sentence, the governor should not restore the civil rights of the convict until the board of pardons has eliminated the conditions. OAG June 30, 1948 (68-H).

A prisoner who is to be allowed a credit for time confined in the county jail while awaiting sentence is entitled to a good conduct credit for that period the same as if he had been in the reformatory instead of in the county jail. OAG Oct. 14, 1947 (341-K-10).

637.08 DUTY OF BOARD, FINAL DISCHARGE

Until the state board of parole grants a final discharge to a convict the board retains legal custody and control over the convict and where the board merely relinquishes control during the time the inmate of a state reformatory is in military service, the convict remains subject to the board's order and the board may revoke the parole and reincarcerate the convict at any time in its discretion. The relinquishment of control and supervision permitting the convict to enter military service is not a final discharge. State ex rel v Whittier, 226 M 356, 32 NW(2d) 856.

637.10 SUPERVISION BY BOARD, AGENTS

The state board of parole has authority to grant a final discharge of convict, but until then, the board retains control and legal custody over the convict who remains subject to the board's orders and to reincarceration at any time in its discretion. State ex rel v Whittier, 226 M 356, 32 NW(2d) 856.

Until the state board of parole grants a final discharge to a convict the board retains legal custody and control over the convict and where the board merely relinquishes control during the time the inmate of a state reformatory is in military service, the convict remains subject to the board's order and the board may revoke the parole and reincarcerate the convict at any time in its discretion. The relinquishment of control and supervision permitting the convict to enter military service is not a final discharge. State ex rel v Whittier, 226 M 356, 32 NW(2d) 856.

637.12 RULES GOVERNING PAROLES

Until the state board of parole grants a final discharge to a convict the board retains legal custody and control over the convict and where the board merely relinquishes control during the time the inmate of a state reformatory is in military

service, the convict remains subject to the board's order and the board may revoke the parole and reincarcerate the convict at any time in its discretion. The relinquishment of control and supervision permitting the convict to enter military service is not a final discharge. State ex rel v Whittier, 226 M 356, 32 NW(2d) 856.

CHAPTER 638

BOARD OF PARDONS

638.01 BOARD OF PARDONS; HOW CONSTITUTED, POWERS

HISTORY. RS 1851 c 131 s 233, 234; PS 1858 c 117 s 1, 2; GS 1866 c 119 s 1, 2; GS 1878 c 119 s 1, 2; GS 1894 s 7415, 7416; 1897 c 23 s 1; RL 1905 s 5424; GS 1913 s 9281.

Mitigation of punishment. 35 MLR 151.

A pardon is the exercise of the sovereign's prerogative of mercy. It completely frees the offender from the control of the state. It not only exempts him from further punishment but relieves him from all the legal disabilities resulting from his conviction. It blots out the very existence of his guilt, so that, in the eye of the law, he is thereafter as innocent as if he had never committed the offense. A parole, on the other hand, does not obliterate the crime or forgive the offender. It is not an act of clemency, but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside prison walls. It does not set aside or affect the sentence; the convict remains in the legal custody of the state and under the control of its agents, subject at any time, for breach of condition, to be returned to the penal institution. Neither is parole a commutation of sentence within the meaning of that term in the constitutional provision. State v Meyer, 228 M 286, 37 NW(2d) 3.

In extradition proceedings the legality of the revocation of a pardon is a question for the pardoning state, that state alone having the right to construe its laws. State ex rel v Ryan, 235 M 161, 50 NW(2d) 259.

638.02 PARDONS, REPRIEVES; UNANIMOUS VOTE

Under the terms of the commutation of sentence issued to the petitioner, the pardon board had the authority to revoke the commutation where the petitioner had expressly waived any right to notice of hearing on the question of the revocation thereof. The pardon or commutation of sentence is an act of grace bestowed upon the prisoner by the pardoning authority and not something that he can demand. The prisoner is not deprived of any legal right when the commutation is revoked without notice or hearing. Washburn v Utecht, 236 M 31, 51 NW(2d) 657.

Commutation by the board of pardons of a life sentence for murder to a sentence for years makes the inmate eligible for parole. OAG Aug. 22, 1947 (328-A-7).

The violation of a traffic ordinance is not a criminal act within the meaning of section 638.02. OAG July 13, 1949 (328-B).

638.07 RECORDS, SECRETARY

Where a prisoner after commutation of his sentence, on condition that he lead a law abiding life, participated in a robbery, and the board of pardons without notice and hearing revoked the commutation of sentence, the prisoner was not entitled to secure his release from prison by habeas corpus. In view of the statute covering habeas corpus and providing for a trial de novo in the supreme court, the common law doctrine permitting the renewal of petition for habeas corpus on the same set of facts no longer exists, but the doctrine of res judicata applies. Guy v Utecht, 229 M 58, 38 NW(2d) 59.