

MINNESOTA STATUTES 1953 ANNOTATIONS

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BOARD OF PARDONS 638.07

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.

MINNESOTA STATUTES 1953 ANNOTATIONS

640.01 STATE PRISON AND REFORMATORIES

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The record of a pardon kept in the governor's office pursuant to statute was an original record and could not be collaterally attacked in habeas corpus proceedings by a prisoner to obtain his release from prison after his commutation was revoked. *Guy v Utecht*, 229 M 58, 38 NW(2d) 59.

INCARCERATION

CHAPTER 640

STATE PRISON AND REFORMATORIES

STATE PRISON

640.01 STATE PRISON; LOCATION AND MANAGEMENT

HISTORY. 1853 c 12 s 1, 5; 1857 c 45 s 1; 1858 c 34 s 1, 2; PS 1858 c 119 s 38, 39; 1862 c 63 s 3; 1863 c 6 s 1, 2, 21-25; 1866 c 10 s 1; GS 1866 c 120 s 25, 26, 45; 1870 c 39 s 1; 1871 c 47 s 1; 1873 c 137 s 2, 3; 1874 c 16 s 1; 1874 c 17 s 1-9; GS 1878 c 120 s 25, 26, 47; 1889 c 254 s 1, 9, 23; GS 1894 s 7449; RL 1905 s 5432; GS 1913 s 9289; 1939 c 431 art 7 s 3.

640.04 USE OF FUND

In the absence of statutory authority the state prison authorities cannot purchase farm lands. Laws 1949, Chapter 728, Section 19, confers no such authority. OAG July 5, 1950 (9-A-39).

640.10 COMMITMENT PAPERS; DUTY OF CLERK AND OFFICER

HISTORY. 1853 c 12 s 14; 1857 c 45 s 1; 1863 c 6 s 43; GS 1866 c 120 s 67; GS 1878 c 120 s 70; 1887 c 208 s 12; GS 1878 Vol 2 (1888 Supp) c 35 s 53(20); 1889 c 254 s 2; 1893 c 9 s 2; 1893 c 114 s 1; 1894 s 3592, 7476, 7508; RL 1905 s 5436; 1911 c 228 s 1; GS 1913 s 9298.

The United States constitution does not require a state to provide the expenses of an appeal for an indigent defendant in a criminal case, and the constitution and statutes of Minnesota neither compel nor authorize such procedure. *State v Lorenz*, 235 M 221, 50 NW(2d) 270.

The court has authority to appoint an attorney for a defendant who acted as his own attorney and was convicted, for the purpose of taking such further proceedings in case as the attorney so appointed may consider advisable. OAG Jan. 30, 1948 (799-K).

640.20 COMMUNICATION WITH CONVICTS

Notwithstanding the provisions of sections 246.01 and 640.20, a prisoner incarcerated in a state prison may: (1) communicate with his attorney and send him briefs; (2) communicate with any judge before whom he has a case pending, and send him briefs; (3) send out petitions for habeas corpus to any judge having jurisdiction thereof, and may send briefs; and, (4) send out briefs relating to an appeal in the case in which he was convicted even though no appeal is pending and the time to appeal has expired. OAG Jan. 20, 1948 (342).

While the utmost freedom is allowed a prisoner in communicating with his attorney and the trial judge, including exchange of briefs, a prisoner cannot without the consent of the warden, correspond in relation to an appeal when no appeal is pending and the time to appeal has expired. OAG Jan. 20, 1948 (342).