

Date	Summary
	<p data-bbox="391 233 1422 369">There is a letter from Monsignor Bresnehan in the file to David Ross, DSW. Dated 8/20/1974, it describes the new child care program to be run at the St. Joseph's Child Center, effective 8/31/1974. The child care staff are named in the letter, and included two Sisters and 5 others. It states that Mary Markle will direct the program.</p> <p data-bbox="391 411 1406 548">There is also a memo in the file from Lyle McGinnis, social worker in the Burlington district office to Enna Remick, supervisor of the Licensing Unit. Mr. McGinnis was the social worker assigned to the children residing at St. Joseph's. The memo may be in response to a query from Ms. Remick. He says:</p> <p data-bbox="391 590 1422 726">"I find it difficult to judge just how well the individual needs of children are met at St. Joseph's. In respect to physical needs there has never been any question in my mind that this need is met very adequately. However, I have often questioned how well the emotional needs of children are being met."</p> <p data-bbox="391 768 1422 873">Later in the memo, Mr. McGinnis says that to his knowledge no placements were made by DSW in 1973. Four children from 2 families were reunited with their families in 1973. Both were families served by the Burlington district.</p> <p data-bbox="391 915 1422 1041">Mr. McGinnis lists all of the children currently placed by DSW, with their dates of placement, and their DSW district office. None of these children appear on the list we received from the Attorney General's office. There were 23 children from 11 different families.</p> <p data-bbox="391 1083 1357 1188">Mr. McGinnis concludes: "Frankly, I would not refer any child for placement if a suitable alternative was available and I think other workers in this district are of a similar opinion."</p>

APPENDIX 2
Summary of Vermont Committed Child Study, 1973

Volume I - Legal Framework and Case Tracking

Of the eleven children profiled in this volume, two of these children, both categorized as “neglected” spent some time at the St. Joseph’s Child Center. One stayed only a few days. The second has been known to Vermont Catholic Charities over time. His parents privately placed him and a sibling St. Joseph’s for over a year. Following his commitment to DSW, he stayed at St. Joseph’s for another 2 years. During that period, 3 siblings also committed to DSW were placed with him at St. Joseph’s. There is no mention of concerns about the treatment of the children in the profiles or following recommendations.

This case illustrates that children were placed privately at St. Joseph’s Child Center and they were also placed there by the Department of Social Welfare.

Volume II - Profiles of Children

Although this volume summarizes data for children in all five commitment categories, the information summarized here pertains only to neglected and unmanageable children committed to the Department of Social Welfare. About a third of children in each category were studied.

Category	Number committed	Number in Sample
Neglected	1000	333
Unmanageable	300	102

Although the study team looked at a wide variety of child and family characteristics, only information pertaining to placement in private institutions is presented here. Note that Volume III clarifies that the following five placements were considered private institutions¹:

- Josephine B. Baird Children’s Center – now Howard Center
- St. Joseph’s Child Center – now defunct
- Kurn Hatin Homes
- Elizabeth Lund Home – now Lund
- Rock Point School

Category	Number Placed in Private Institutions as First Placement	Percent Placed in Private Institutions as First Placement
Neglected	12	3.8%
Unmanageable	7	7.4%

¹ Vermont Committed Child Study (August 1973), Volume III, page II-3.

This volume does not summarize information about placements generally, after the first placement. See Volume III.

Volume III – Evaluation of Services

As part of the evaluation of services, professionals from state and private agencies were interviewed, as well as foster parents. This included interview of staff of St. Joseph’s Child Center.

On January 30, 1973, children committed to the Department of Social Welfare as neglected or unmanageable were placed in the following settings²:

Placement Type	Neglected		Unmanageable		All	
	Number	Percent	Number	Percent	Number	Percent
Foster Home	587	63%	67	22.4%	654	53.1%
Group Home	38	4.1%	22	7.4%	60	4.9%
Public Institution	14	1.5%	81	27.1%	95	7.7%
Private Institution	63	6.8%	27	9.0%	90	7.3%
Parent	116	12.4%	73	24.4%	189	15.4%
Relative	101	10.8%	18	6.0%	119	9.7%
Other	13	1.4%	11	3.7%	24	1.9%

This study seems to have concluded that private institutions provided a level of care and treatment superior to many other placements. Volume III, page II-43 describes private institutions as follows:

- “Private child care institutions have been established to provide residential care and treatment for group of children who cannot be cared for in their own homes.
 - Institutions generally care for large numbers of children, offer a wide range of services, and are staffed by professional child care workers.
 - Institutional care is believed to have the following advantages:
 - A wider range of professionals is available to meet special needs.
 - Services are easier to deliver, and coordination of services is facilitated.
 - The institution does not provide substitutes for the parental role, and thus leaves natural family loyalties intact.
 - Institutions vary in the range of services they provided, the ages and sex of children they serve, and the types of dysfunctional children they accept.
- In Vermont, many such child care institutions have been established, and approximately 12 are licensed to accept children committed to the care and custody of the State of Vermont.
 - Some are similar to boarding schools, and others deal with children who have special physical or emotional problems.
 - Private child care institutions tend to be clustered in or near the major urban centers.
 - About one-half of the special-purpose institutions are located in or immediately outside of Burlington.
 - A center for treating physically handicapped children in located in Rutland.

² Vermont Committed Child Study (August 1973), Volume III, Exhibit II-1 (no page number)

- The role of these institutions in the service system for neglected and unmanageable children committed children is essential, for many children with special problems cannot receive treatment elsewhere.
 - In the Profiles of Children survey, 5.2 per cent of neglected children and 6.9 per cent of unmanageable children had been initially placed in private institutions.
 - April [1973] statistic from the Department of Social Welfare list over 80 children in the care of private institutions.
 - St. Joseph’s Child Center reports that over 90 per cent of the committed children in residence had previously been placed in foster homes and that over 40 per cent had had two or more previous placements.
- Either the Department of Social Welfare or the State Department of Education licenses the private institutions which care for committed children.
 - DSW [the Department of Social Welfare] has established licensing standards for private institutions covering organizations and administration, programs and services, records and reports, facilities, transportation and emergency planning.
 - Licenses of such institutions are renewable annually, by application.
 - The State Department of Education approves the programs of institutions, such as Rock Point and Kurn Hatın, which are considered to be schools.
- Like group homes, private institutions are statewide resources.
 - DSW workers from any office may, after securing central office approval, place a child in an appropriate institution, if he meets the institution’s criteria, and if a place is available.
- Private institutions operate independently and usually provide social services to children through their own staff, rather than through DSW workers.”

Volume III describes the child private institutions visited, including St. Joseph’s Child Center. At that time St. Joseph’s Child Center had 108 children placed at the center, including 46 committed children. Only Kurn Hatın, with 130 children placed (including 9 committed children) was larger.³

The report further describes St. Joseph’s Child Center as follows⁴:

“St. Joseph’s Child Center is sponsored by the Roman Catholic Diocese; located in Burlington, it provides a home for dependent and neglected children.

- In addition to residential care, services provided include schooling, medical and dental treatment, counseling and adoption placement.
- At the time of the study, 46 of the 108 children in residence were committed to the care and custody of the State of Vermont.
 - Forty of them had been committed as neglected, five as unmanageable, and one was awaiting disposition.

As part of the report’s section of implication of findings, the following is included⁵:

³ Vermont Committed Children’s Study (August 1973), Volume III, un-numbered page following page II-45.)

⁴ Vermont Committed Children’s Study (August 1973), Volume III, page II-47.

⁵ Vermont Committed Children’s Study (August 1973), Volume III, page II-56.

“Private institutions in Vermont may not be sufficiently utilized as facilities for the care and treatment of neglected and unmanageable children.

- Fewer than 10 per cent of neglected and unmanageable children are placed in private institutions.
 - Many placements in private institutions are made after foster homes have proven inadequate.
- Institutional placements are frequently not made, even in light of the superior resources and professional staff capabilities of private institutions.
 - Foster home placements are the easiest to make, and the least expensive placement alternatives.
 - A strong antiinstitutional [sic] bias exists among those interested in child welfare in Vermont.”

Volume IV – Recommendations

A careful review of Volume IV does not reveal any content regarding the role of private child care institutions in providing care and placement for neglected or unmanageable children committed to the state.

Appendix 7

"Chronique de l'Orphelinat St. Joseph"

The Chronicle of Saint Joseph's Orphanage,
translated from the original French by William Goss,
Diocesan Archives 1977.

Original is preserved at the Motherhouse
of the Sisters of Providence in Montreal, Quebec.

Our first thought was to thank God, for (p.248) is not the cross the tree on which bloom the flowers which form the most beautiful crowns?
 After the singing of the Te Deum we begin to disinfect all the rooms in the house. May the holy name of God be praised!

New Year's Day.

We happily greet this new year which will bring us the Golden Jubilee of our Orphanage! We ask God to graciously bless this year which begins for us while for that which has just ended we say "Merci" and "Pardon" - yes, "Merci" for all the graces and favors received, and "Pardon" for the oversights, the ingratitude, and the faults committed.

Death of Mrs. Michaud.

15. The death of Mrs. Michaud, the mother of Bishop Michaud. Following an illness of several months this good mother watched death approach with a sweet tranquility, for there is nothing to fear when we have served the good Lord well. She was ninety- (p.249) three years old, but yet retained all her faculties and had a prodigious memory.

We submit our plans for the Jubilee to His Lordship, and the following is the response he gave us:

(letter is in English - w.g.)

Letter of Bishop Michaud.

Cathedral of Im. Conception.
 Burlington, Vt. Jan. 21st 1904.

Rev. Sister M. Precious Blood.

Ma Soeur:

I was just ten years old, Nov. 24th 1853, when as per the diary of the late Venerable Louis de Goesbriand, Bp. of Burl. he went to Montreal and visited with that great man, Monseigneur Bourget, Eveque de Montreal. At that visit he asked for the Sisters of Providence to come to Burlington Diocese.

In the month of St. Joseph this: "27th of March 1854 - the Pearl Street House bought by me for the sum of \$7,100.00 - the same day the Bishop of Montreal writes me that the Sisters of Providence - se placent a la disposition de Votre Grandeur. April 10th, '54 - the Sisters of Providence (p.250) have consented to come to take charge of the Pearl Street House - where it is intended they will teach school, harbor orphans, and perhaps sick persons - Sisters Caron and Theresa came Saturday to see the House and make arrangements - It is agreed that they will come about the first of May to occupy the house, take care of the garden and prepare children for First Communion. The others will come at the beginning of July - Sit nomen Domini benedictum.

You see, ma Soeur, that I am giving you the history of those days - as taken from the notes in the Bishop's diary -

Appendix 8

PREFACE
THE
PUBLIC LAWS
OF VERMONT
1933

INCLUDING THE PUBLIC ACTS OF 1933

WITH

THE DECLARATION OF INDEPENDENCE
THE ARTICLES OF CONFEDERATION

AND THE

CONSTITUTIONS OF THE UNITED STATES
AND THE STATE OF VERMONT



PUBLISHED BY AUTHORITY
1934

TABLE OF CONTENTS.

PART VI.

INCORPORATED SCHOOL DISTRICTS.

- CHAP. 189. Incorporated school districts. (4369-4392)..... 730

PART VII.

STATE SCHOOL OF AGRICULTURE.

- CHAP. 190. State school of agriculture. (4393-4398)..... 733

PART VIII.

UNIVERSITIES AND COLLEGES.

- CHAP. 191. University of Vermont, Middlebury College and Norwich University,
(4399-4414)..... 734

PART IX.

PUBLIC LIBRARIES.

- CHAP. 192. Establishment of public libraries. (4415-4445)..... 738

TITLE 19.

AGRICULTURE, LIVE STOCK AND FORESTRY.

- CHAP. 193. Agriculture. (4446-4488)..... 743
 CHAP. 194. Live stock. (4489-4555)..... 750
 CHAP. 195. Forestry. (4556-4602)..... 760
 CHAP. 196. Creamery companies. (4603-4617)..... 766
 CHAP. 197. Control, distribution and sale of milk. (4618-4630)..... 769
 CHAP. 198. County farm bureau associations. (4631-4642)..... 770

TITLE 20.

DEPARTMENT OF HIGHWAYS.

- CHAP. 199. Highway board and commissioner. (4643-4691)..... 772
 CHAP. 200. State highway system. (4692-4732)..... 779
 CHAP. 201. Federal aid. (4733-4739)..... 785
 CHAP. 202. Laying out and discontinuing highways by local authorities. (4740-4869)..... 786
 CHAP. 203. Repair of highways by local authorities. (4870-4912)..... 802
 CHAP. 204. Protection of highways. (4913-4943)..... 808
 CHAP. 205. County road commissioners and liability of towns. (4944-4965)..... 812
 CHAP. 206. Toll bridge commissioners. (4966-4973)..... 816

TABLE OF CONTENTS.

TITLE 21.

DEPARTMENT OF PUBLIC WORKS.

- CHAP. 207. Board of public works. (4974-4985)..... 817

TITLE 22.

MOTOR VEHICLES AND AERONAUTICS.

- PART I. Motor vehicles. (4986-5215)
 PART II. Aeronautics. (5216-5249)

PART I.

MOTOR VEHICLES.

- CHAP. 208. Departmental organization. (4986-5017)..... 819
 CHAP. 209. Registration of motor vehicles and trailers. (5018-5087)..... 827
 PART A. General registration. (5018-5034)..... 827
 PART B. Nonresident and zone registration. (5035-5046)..... 830
 PART C. General registration fees. (5047-5059)..... 832
 PART D. Registration of dealers and repairmen. (5060-5087)..... 834
 CHAP. 210. Licenses to operators. (5088-5109)..... 838
 CHAP. 211. Operation of motor vehicles. (5110-5147)..... 841
 CHAP. 212. Offenses, penalties and jurisdiction. (5148-5189)..... 848
 CHAP. 213. Motor vehicle insurance. (5190-5214)..... 853
 CHAP. 214. Designation and validity. (5215)..... 857

PART II.

AERONAUTICS.

- CHAP. 215. Administration. (5216-5218)..... 857
 CHAP. 216. Legal status. (5219-5231)..... 858
 CHAP. 217. Registration and licensing of aircraft. (5232-5242)..... 859
 CHAP. 218. Operation of aircraft. (5243-5249)..... 861

TITLE 23.

DEPARTMENT OF PUBLIC HEALTH.

- CHAP. 219. Preservation of public health. (5250-5336)..... 862
 CHAP. 220. Control of rabies. (5337-5346)..... 874
 CHAP. 221. Pure food and drugs. (5347-5381)..... 875
 CHAP. 222. Food establishments. (5382-5400)..... 882
 CHAP. 223. Pollution of waters. (5401-5414)..... 884

TITLE 24.

DEPARTMENT OF PUBLIC WELFARE.

- CHAP. 224. Charities. (5415-5437)..... 887
 CHAP. 225. Voluntary sterilization. (5438-5442)..... 891

TABLE OF CONTENTS.

CHAP. 226. Dependent, neglected and delinquent children. (5443-5470)..... 892
 CHAP. 227. State detention farms. (5471-5480)..... 896
 CHAP. 228. Reformatory and penal institutions. (5481-5522)..... 904
 CHAP. 229. Treatment of tuberculosis. (5523-5531)..... 904
 PART I. Washington county, tuberculosis hospital. (5523, 5524) 904
 PART II. Vermont sanatorium. (5525, 5526)..... 904
 PART III. Indigent tuberculosis persons. (5527-5531)..... 905
 CHAP. 230. Vermont state hospital for the insane. (5532-5561)..... 909
 CHAP. 231. Instruction of mentally defective persons. (5562-5574)..... 911
 CHAP. 232. Brandon state school. (5575-5589)..... 911

TITLE 25.

DEPARTMENT OF FISH AND GAME.

CHAP. 233. Fish and game commissioner and wardens. (5590-5650)..... 913
 CHAP. 234. Fish. (5651-5708)..... 930
 CHAP. 235. Birds and quadrupeds. (5709-5754)..... 937
 CHAP. 236. Transportation. (5755-5763)..... 938
 CHAP. 237. Private preserves. (5764-5781)..... 941
 CHAP. 238. Bounty on bay lynx. (5782-5785)..... 941

TITLE 26.

CORPORATIONS.

CHAP. 239. General corporation law. (5786-5887)..... 942
 CHAP. 240. Scrip corporations. (5888-5904)..... 961
 CHAP. 241. The cooperative marketing act. (5905-5946)..... 972
 CHAP. 242. Public service corporations, other than railroads. (5947-5971)..... 975
 CHAP. 243. Foreign corporations. (5972-6001)..... 980
 CHAP. 244. Corporations under jurisdiction of public service commission. (6002-6012)..... 980

TITLE 27.

RELIGIOUS SOCIETIES, LIMITED PARTNERSHIPS AND PUBLICITY OF PARTNERSHIPS.

CHAP. 245. Religious societies. (6013-6028)..... 983
 CHAP. 246. Limited partnerships. (6029-6039)..... 985
 CHAP. 247. Publicity of partnerships. (6040-6053)..... 987

TITLE 28.

DEPARTMENT OF PUBLIC SERVICE.

PART I. Public service commission. (6054-6133)
 PART II. Railroads. (6134-6412)
 PART III. Telegraph, telephone, express and electric companies. (6413-6461)

PART I.

PUBLIC SERVICE COMMISSION.

CHAP. 248. General provisions. (6054-6073)..... 990
 CHAP. 249. Powers and duties as to railroads. (6074-6083)..... 994
 CHAP. 250. Powers and duties as to other public service companies. (6084-6133)..... 996

TABLE OF CONTENTS.

PART II.

RAILROADS.

CHAP. 251. General provisions. (6134-6144)..... 1005
 CHAP. 252. Incorporation under general law. (6145-6161)..... 1006
 CHAP. 253. Organization, stock, bonds and mortgages. (6162-6197)..... 1010
 CHAP. 254. Construction and operation of the road. (6198-6329)..... 1015
 CHAP. 255. Regulation of railroad rates. (6330-6343)..... 1034
 CHAP. 256. Grade crossings. (6344-6357)..... 1038
 CHAP. 257. Trustees and proceedings after foreclosure; receivers of consolidated railroads. (6358-6398)..... 1041
 CHAP. 258. Consolidation and merger; change of name. (6399-6412)..... 1048

PART III.

TELEGRAPH, TELEPHONE, EXPRESS AND ELECTRIC COMPANIES

CHAP. 259. Telegraph, telephone and express companies. (6413-6451)..... 1051
 CHAP. 260. Electric companies. (6452-6461)..... 1056

TITLE 29.

STREAMS.

CHAP. 261. Floating lumber. (6462-6469)..... 1059
 CHAP. 262. Assessment of damages done by floating lumber. (6470-6475)..... 1060
 CHAP. 263. Channels of streams and obstructions therein. (6476-6479)..... 1061

TITLE 30.

LABOR.

CHAP. 264. Employer's liability and workmen's compensation. (6480-6578)..... 1063
 CHAP. 265. Employment of minors and women. (6579-6598)..... 1081
 CHAP. 266. Employment offices. (6599-6602)..... 1084
 CHAP. 267. Inspection of factories, steam engines and boilers. (6603-6612)..... 1084
 CHAP. 268. Wages and medium of payment. (6613-6619)..... 1086
 CHAP. 269. Conciliation and arbitration. (6620-6633)..... 1087

TITLE 31.

BANKING AND INSURANCE.

PART I. General Provisions. (6634-6648)
 PART II. Banks. (6649-6910)
 PART III. Insurance. (6911-7128)

PART I.

GENERAL PROVISIONS.

CHAP. 270. General provisions. (6634-6648)..... 1089

TABLE OF CONTENTS.

TITLE 37.

CRIMES AND OFFENSES.

CHAP. 334. Treason, offenses against the government and raids. (8361-8373)....1390
 CHAP. 335. Offenses against the person. (8374-8418).....1393
 CHAP. 336. Arson and burning. (8419-8427).....1398
 CHAP. 337. Transportation of explosives and tear bombs. (8428-8435).....1399
 CHAP. 338. Burglary, larceny and embezzlement. (8436-8458).....1400
 CHAP. 339. Frauds. (8459-8483).....1404
 CHAP. 340. Forgery, counterfeiting and illicit money. (8484-8497).....1408
 CHAP. 341. Cruelty to animals. (8498-8515).....1410
 CHAP. 342. Trespasses and malicious injuries. (8516-8578).....1413
 CHAP. 343. Tramps. (8579-8584).....1422
 CHAP. 344. Breaches of the peace and disturbances. (8585-8599).....1423
 CHAP. 345. Offenses against chastity and morality. (8600-8626).....1425
 CHAP. 346. Offenses against public health. (8627-8649).....1429
 CHAP. 347. Offenses against public justice. (8650-8682).....1432
 CHAP. 348. Offenses against public policy. (8683-8740).....1436
 CHAP. 349. Accessories, attempts, criminal intent and compounding felony.
 (8741-8749).....1444
 CHAP. 350. Crimes defined and habitual criminals. (8750, 8751).....1445

TITLE 38.

IMPRISONMENT AND PARDONS.

CHAP. 351. Sentences and commitments. (8752-8820).....1446
 CHAP. 352. County jails. (8821-8857).....1455
 CHAP. 353. Town and village lockups. (8858-8861).....1460
 CHAP. 354. Counsel for person restrained of liberty. (8862-8864).....1460
 CHAP. 355. Probation. (8865-8884).....1461
 CHAP. 356. Pardons and discharges. (8885-8890).....1464

TITLE 39.

SALARIES AND FEES.

CHAP. 357. Salaries. (8891-8990).....1466
 CHAP. 358. Fees. (8991-9064).....1475

TITLE 40.

SUPPLIES AND PRINTING.

CHAP. 359. Supplies. (9065-9072).....1488
 CHAP. 360. Public printing. (9073-9110).....1489

TITLE 41.

FORMS.

CHAP. 361. Forms of writs, precepts and other instruments. (9111).....1495
 CHAP. 362. Forms of oaths. (9112-9116).....1521

TABLE OF CONTENTS.

TITLE 42.

THE PUBLIC LAWS AND REPEAL OF EXISTING STATUTES.

CHAP. 363. The Public Laws and repeal of existing statutes. (9117-9126).....1524
 CERTIFICATE.....1553
 TABLE SHOWING DISPOSITION OF STATUTES.....1554
 TABLE SHOWING DISPOSITION OF SESSION LAWS.....1580
 INDEX, FOLLOWING P. 1603..... 1

official certificate thereof, any person subsequently holding the office may make such certificate, which shall be as valid as if made by the officer who made the record, but such certificate shall not affect any intervening right.

PART II.

(2321-2550)

PROCEEDINGS IN CRIMINAL CAUSES*.

- CHAPTER 100.—General provisions. (2321-2331)
 CHAPTER 101.—Grand jury and informing officers. (2332-2348)
 CHAPTER 102.—Place of trial and proceedings in court. (2349-2449)
 CHAPTER 103.—Limitation of criminal prosecutions and actions on penal statutes. (2450-2460)
 CHAPTER 104.—New trials in criminal causes. (2461-2464)
 CHAPTER 105.—Judgment and execution in criminal causes. (2465-2476)
 CHAPTER 106.—Fines, costs and recognizances in criminal causes. (2477-2505)
 CHAPTER 107.—Extradition; transportation of prisoners. (2506-2550)

CHAPTER 100.

(2321-2331)

GENERAL PROVISIONS.

G. L. § 2490.
61 Vt. 45.

SEC. 2321. **Indictment.** A person shall not be held to answer in court for an alleged crime or offense, unless upon indictment by a grand jury, except in proceedings before justice's or municipal courts and when a prosecution by information is authorized.

1919, No. 76, § 1.
G. L. § 2491.
2 Tyl. 387.
57 Vt. 637.
59 Vt. 84.
59 Vt. 654.

SEC. 2322. **Former acquittal a bar.** A person shall not be held to answer on the same or a second complaint, information or indictment for an offense of which he was acquitted by a jury upon the merits on a former trial, but such acquittal may be pleaded in bar of a subsequent prosecution for the same offense, notwithstanding defects in the form or substance of the complaint, information or indictment on which he was acquitted.

G. L. § 2492.

SEC. 2323. **Same; unless upon a variance.** When a person is acquitted by reason of a variance between the complaint, information or indictment and the proof, or upon an exception to the form or substance of the complaint, information or indictment, he may be arraigned again on a new complaint, information or indictment and may be tried and convicted for the same offense notwithstanding such former acquittal.

G. L. § 2493.

SEC. 2324. **Person not to be punished unless court has jurisdiction.** A person shall not be punished for an offense, unless he is convicted thereof in a court having jurisdiction of the cause and the person.

G. L. § 2494.
68 Vt. 311.
91 Vt. 330.

SEC. 2325. **Conviction to be by plea or verdict.** A person shall not be punished for an offense unless by confession of his guilt in open court, or by admitting the truth of the charge against him by his plea or demurrer, or by the verdict of a jury accepted by the court and recorded, or by the judgment of a justice's or municipal court when the respondent waives trial by jury.

*See chapter 74 for certain sections relating to jurors in both civil and criminal causes.

CHAP. 101.]

SEC. 2326. **Separate trials for respondents.** Persons jointly informed against or indicted shall be tried separately or jointly in the discretion of the court, except that when two or more persons are jointly informed against or indicted for a felony punishable by death or imprisonment in the state prison for a term exceeding five years, such respondent requesting it shall be tried separately, provided that the provisions of this section shall not apply to a trial on an information or indictment charging conspiracy.

SEC. 2327. **Rights of accused on trial.** On the trial of an information or indictment, the party accused may defend himself, be heard by counsel, produce witnesses and proofs in his favor, and shall be confronted with the witnesses produced against him.

SEC. 2328. **Commitment, how made.** When a prisoner is committed to jail on criminal process, the commitment shall be in the manner prescribed for commitments on civil process.

SEC. 2329. **Copy of process for accused.** When an officer does not within six hours deliver a true copy of the warrant or process by which he detains a person in a criminal proceeding, to a person who demands such copy and tenders the fees therefor, he shall forfeit to such person two hundred dollars.

SEC. 2330. **Warrant, to whom directed.** A warrant issued in a criminal cause shall, except as otherwise provided, be directed to any sheriff or constable in the state.

SEC. 2331. **Costs in criminal causes.** In criminal causes where the punishment is by a fine or imprisonment, or both, costs shall follow unless otherwise ordered by the court.

CHAPTER 101.

(2332-2348)

GRAND JURY AND INFORMING OFFICERS.

Grand Jury.

SEC. 2332. **Foreman; powers and duties of jury.** After a grand jury is impaneled and sworn, the court shall appoint a foreman, who may administer oaths to witnesses before such grand jury. When the grand jury finds an indictment supported by good and sufficient evidence, the foreman shall write thereon "a true bill;" and when it does not find an indictment so supported, he shall write thereon "this bill not found," and the accused person shall be thereupon discharged.

SEC. 2333. **Bill, how found.** An indictment shall not be presented by a grand jury, unless twelve of the jurors agree in the same.

Clerk before Grand Jury.

SEC. 2334. **To take testimony.** A clerk may, at the expense of the state and upon the approval of the presiding judge, take testimony before the grand jury for the use of the state's attorney.

SEC. 2335. **Order of approval to be filed; oath.** The order of approval from the presiding judge shall be in writing and filed with the county clerk, and may be revoked by the judge for cause shown. The clerk shall, before entering upon his duties, make oath before the county clerk that he will keep secret all matters and things coming before the grand jury.

G. L. § 2505.

SEC. 2336. Clerk not to disclose testimony; exception; minutes property of state. The clerk shall not disclose testimony so taken by him, except to the attorney general, state's attorney and grand jury; and the minutes of testimony so taken shall be the property of the state and the same or a copy thereof shall not go out of the possession of the attorney general, state's attorney or their successors, except to an attorney appointed by the court to act in the place of or to assist the state's attorney, but nothing in this section shall prevent the clerk from disclosing such evidence on an order of the supreme or county court.

G. L. § 2506.

SEC. 2337. Penalty. A clerk approved as aforesaid who violates a provision of the two preceding sections shall be imprisoned not more than one year or fined not more than one thousand dollars nor less than one hundred dollars, or both.

Prosecutions by Information.

G. L. § 2507.
9 Vt. 57.
23 Vt. 698.
52 Vt. 476.
61 Vt. 45.

SEC. 2338. By state's attorney. Crimes not punishable by death or by imprisonment in the state prison for life may be prosecuted by a state's attorney by information.

G. L. § 2508.
34 Vt. 345.

SEC. 2339. By town grand juror. A town grand juror shall inquire into and due presentment make to proper authority of offenses which may come to his knowledge, within the town for which he is elected, or within an unorganized town or gore adjoining such town, which in his judgment ought to be prosecuted.

G. L. § 2509.
27 Vt. 328.
27 Vt. 553.
30 Vt. 467.

SEC. 2340. Same; how made. Presentments by a grand juror shall be made under his oath of office and official signature, to a justice or a municipal court, by a complaint in writing.

G. L. § 2510.

SEC. 2341. Grand juror may attend examination. A town grand juror may attend the examination of a person arraigned on such complaint.

G. L. § 2511.

SEC. 2342. Officers as informing officers, when. When a sheriff, deputy sheriff or constable, or a police officer of a city or incorporated village, arrests a person for a misdemeanor, without warrant, he shall forthwith take such person before a court having jurisdiction of the offense. Such officers shall be complaining officers for the purpose of making presentment against persons so arrested by them, by complaint in writing, under their oath of office and official signature, to the court before which such person is brought.

G. L. § 2512.

SEC. 2343. Same; procedure; notice. If, upon such presentment, the respondent pleads guilty, such court shall thereupon impose sentence; but if the respondent pleads not guilty, such court may, in its discretion, notify the town or city grand juror, or city or village attorney, who shall forthwith enter and prosecute such complaint, and be allowed the fees provided by section 9015, which shall be taxed against the respondent; and the court may, in its discretion, also notify the state's attorney of the county within which such misdemeanor is committed, who may also enter and prosecute such complaint. For making such complaint, the sheriff, deputy sheriff, constable or police officer shall receive no fee.

G. L. § 2513.

SEC. 2344. Amending complaint; when and by whom. State's attorneys, grand jurors and city or village attorneys may, whenever necessary, amend a complaint authorized to be made under the provisions of the preceding sections.

G. L. § 2514.
60 Vt. 618.

SEC. 2345. Recognizance, when required of complainant. A warrant to apprehend a person charged with a criminal offense shall not

be granted by a justice or a municipal judge except on information or complaint of an informing or complaining officer, until such magistrate has taken security to his satisfaction, by way of recognizance to the person so charged, that the prosecutor will answer the damages if he does not prosecute his information to effect, and a minute of such recognizance shall be made as in civil causes.

SEC. 2346. Discharge of person bound over for trial; how made; certificate; effect. When a person is confined in jail by reason of failure to furnish bail on being bound over to a county or municipal court, and the grand jury reports that a bill is not found against such person or the state's attorney notifies the county clerk or the judge of such municipal court, as the case may be, that an information will not be filed against such person, the clerk or judge shall forthwith certify such fact to the jailer, and thereupon such person shall be discharged from custody, and the date of such certificate shall be deemed to be the date on which such person was discharged.

Employment of Counsel.

SEC. 2347. Grand juror may employ. In the examination of a person charged with a crime exceeding the jurisdiction of a justice's or municipal court to try and determine, commenced upon the complaint of a complaining officer not entitled to draw a salary, and in the trial of a person before such court upon the complaint of such an officer, charging him with a crime within the jurisdiction of such court to try and determine, where the fine is payable to the state, such officer may employ counsel at the expense of the state, when the state's attorney is disqualified or unable seasonably to attend at such examination or trial.

SEC. 2348. Payment. The auditor of accounts shall allow counsel so employed a reasonable compensation for his services and expenses and shall issue his warrant for the amount allowed. Compensation shall not be allowed where it appears to the auditor that the prosecution was superfluous and instituted to enhance costs, nor in the trial of a person upon a complaint for intoxication or for any other offense against the chapter relating to intoxicating liquors, except where the respondent pleads not guilty.

CHAPTER 102.

(2349-2449)

PLACE OF TRIAL AND PROCEEDINGS IN COURT.

Place of Trial.

SEC. 2349. In what county. Criminal causes, when not otherwise provided, shall be tried in the county where the offense is committed. G. L. § 2518.

SEC. 2350. When act in one county causes death in another. A person feloniously wounding or poisoning a person in one county, whose death results therefrom in another county, may be indicted and tried in either county. G. L. § 2519.

SEC. 2351. Offense on boundary. If an offense is committed on the boundary of two or more counties, or within one hundred rods of such boundary, such offense may be alleged in the complaint, information or indictment to have been committed and may be prosecuted in any of such counties. G. L. § 2520.

SEC. 2352. Before a justice. Prosecutions of a criminal nature before a justice, within his jurisdiction to try and determine, shall be tried in the town where the offense is committed or the respondent resides. G. L. § 2522.
46 Vt. 176.
47 Vt. 78.

Change of Venue.

G. L. § 2523.
104 Vt. 379.

SEC. 2353. Application. When a person is under information or indictment for an offense punishable by death or imprisonment in the state prison, the respondent or the state's attorney of the county where the prosecution is pending, may apply to a superior judge, petitioning that the trial of such respondent be removed to and had in another county.

G. L. § 2524.

SEC. 2354. Respondent to be committed; effect on bail. If such respondent has given bail and is at liberty at the time the application for removal is made, the judge to whom the application is preferred, if in his opinion the same is proper to be granted, shall, before making the order of removal, issue a warrant commanding that such respondent be apprehended and committed to the jail of the county in which the prosecution is pending. Upon the commitment of such respondent, the bail shall be discharged, if such commitment is made previous to the term of court at which such respondent was recognized to appear.

G. L. § 2525.
104 Vt. 379.

SEC. 2355. Order for removal for trial. When such respondent is in custody at the time the application is made, or when, having been at liberty, he has been apprehended and committed as provided in the preceding section, the judge to whom the application is preferred, may, in his discretion, by an order in writing, direct that the trial of such respondent be removed to and had in some other county named, and such order shall be filed with the clerk of the county court in which such respondent was informed against or indicted.

G. L. § 2526.

SEC. 2356. Bail. The judge making the order of removal may, if the offense charged is bailable, take a recognizance with sufficient surety of such respondent, conditioned for his personal appearance before the court in which his trial is ordered to be had.

G. L. § 2527.

SEC. 2357. Order for removal of respondent. If such respondent is in custody from failure to find the required bonds or otherwise, or if the offense is not bailable, or if having entered into recognizance to appear, he is again apprehended and committed at the request of his bail, the judge making the order of removal shall, previous to the next term of the court in which such respondent is ordered to be tried, issue an order in writing to the sheriff of the county in which such respondent is confined, commanding him to deliver such respondent to the keeper of the jail in the county in which the trial is ordered to be had.

G. L. § 2528.

SEC. 2358. Service and return. The sheriff shall forthwith remove and deliver such respondent as directed in the order, leave a copy of the same with his return indorsed thereon with the keeper of the jail to which such respondent is committed and return the original order with his return indorsed thereon to the clerk of the court in the county in which such respondent was informed against or indicted.

G. L. § 2529.

SEC. 2359. Clerk to transmit papers; cause to proceed. The clerk shall, upon receipt of such order and return, forthwith transmit the same, together with the other papers in the cause, to the clerk of the court in the county in which the trial is ordered to be had; and thereupon such court shall have jurisdiction of the cause and the same proceedings had therein, as though such offense had been committed in such county.

G. L. § 2530.

SEC. 2360. Which state's attorney to prosecute. The state's attorney of the county in which the respondent is informed against or indicted, shall appear in behalf of the state at the trial of the respondent in the supreme court, or in any county to which the trial is removed, and in proceedings relating thereto shall have the same powers and be subject to the same duties and liabilities as though the trial were had in the county for which he is attorney.

Supreme Court May Allow Respondent to Plead.

SEC. 2361. In what causes; sentence. When a person is confined in jail on an information or indictment for a crime or misdemeanor, pending in the county court, the supreme court may, on his written application, stating that he desires to plead guilty to such information or indictment, issue an order to the clerk of such county court to transfer such information or indictment and the pleadings made in relation thereto, to the files of the supreme court; and, upon such information or indictment being so transferred, the supreme court may receive and record a plea of guilty and award sentence thereon. G. L. § 2531.

SEC. 2362. Causes remanded for trial, if one required. If, upon an information or indictment being so transferred to the supreme court, the respondent pleads not guilty, or a plea upon which an issue of fact is joined, such information or indictment, with the pleadings in relation thereto and a certificate of the proceedings thereon, shall be removed to the county court where such cause was pending, and be there tried as though the same had not been transferred to the supreme court. G. L. § 2532.

Filing Information at Request of Respondent.

SEC. 2363. In supreme court. When a person is confined in jail on a complaint for a crime or misdemeanor, the supreme court may, on his written application, direct an information to be filed against him for the offense for which he stands charged, and on such information being filed, may receive and record a plea of guilty and award sentence thereon and hear and determine questions of law arising on such information. G. L. § 2533.
78 Vt. 124.

SEC. 2364. Removal to county court for trial. If, upon such information, the respondent pleads not guilty, or a plea upon which an issue of fact is joined, such information, with a certificate of the proceedings thereon, shall be removed to the county court in the county where such respondent was confined when he made his application and there tried as if an indictment had been presented against him. G. L. § 2534.

SEC. 2365. In county court. If a person is confined in jail on a complaint for a crime or misdemeanor, the county court for the county may, on his written motion, direct an information to be filed against him for such offense, and on such information being filed may try him as if an indictment had been presented against him. G. L. § 2535.
78 Vt. 124.

SEC. 2366. Capital crimes excepted. The provisions of the three preceding sections shall not extend to a crime for which the punishment is death or imprisonment in the state prison for life. G. L. § 2536.

SEC. 2367. Special terms of county court. When a person is confined in jail on a complaint for an offense which may be prosecuted by information, any superior judge in vacation may, on the written petition of the respondent, direct an information to be filed against him with the clerk of the county court for the county in which such jail is located, for the offense charged; and, on such information being filed, the assistant judges of such court may convene a special term thereof. G. L. § 2537.

SEC. 2368. Same; plea of guilty; mittimus. At such special term, the court may receive and record a plea of guilty and award sentence thereon and hear and determine questions of law arising on such information. The clerk of the court shall forthwith issue a mittimus to carry such sentence into effect. G. L. § 2537.

SEC. 2369. Procedure if respondent pleads not guilty. If, upon such information, the respondent pleads not guilty, or a plea upon which an issue is joined, such information, with a certificate of the proceedings therein signed by the court, shall be filed with the clerk of the court, G. L. § 2538.

and thereupon the respondent shall be ordered recommitted to such jail and the clerk of the court shall issue a mittimus accordingly.

Counsel Assigned.*

G. L. § 2539.
89 Vt. 490.

SEC. 2370. How paid; exceptions. Compensation shall not be paid by the state to counsel assigned to defend a respondent in a criminal proceeding, except to counsel assigned by the county court in capital causes or in causes where the punishment is by imprisonment in the state prison; or to counsel assigned to assist the state's attorney in a criminal proceeding, except in capital causes or where the punishment is by imprisonment in the state prison for a term exceeding ten years or where the state's attorney is disqualified by reason of interest or relationship to the respondent.

Pleadings in Criminal Causes.

G. L. § 2540.
55 Vt. 211.

SEC. 2371. Time allowed respondent. A person shall not be compelled to plead to an information or indictment until twenty-four hours after being furnished with a copy of the same, and the clerk of the court shall furnish such copy.

G. L. § 2541.
41 Vt. 691.
50 Vt. 731.
54 Vt. 179.
55 Vt. 550.
58 Vt. 524.
59 Vt. 661.
64 Vt. 372.
65 Vt. 439.
90 Vt. 125.
G. L. § 2542.
85 Vt. 233.

SEC. 2372. Objections to formal defects; amendment. Objections to a complaint, information or indictment, for a formal defect apparent upon the face thereof, shall be taken by demurrer or motion to quash, before the jury is sworn; and the court may cause the complaint, information or indictment to be forthwith amended in such particular by some officer of the court.

SEC. 2373. Standing mute. When a person arraigned on a complaint, information or indictment stands mute or refuses to plead or be tried by due course of law, he shall be treated as pleading not guilty, and the trial shall proceed accordingly.

G. L. § 2543.

SEC. 2374. Judgment against corporation on default. If a corporation, having been served with process, does not answer to a complaint, information or indictment, its default shall be recorded and the charges in the complaint, information or indictment shall be taken to be true and judgment rendered accordingly.

G. L. § 2544.

SEC. 2375. Proof showing a greater offense a nolle prosequi may be allowed. If, upon the trial of a person charged with an offense, the facts given in evidence amount in law to a greater offense than the one charged, such person shall not by reason thereof be acquitted, but the court may, in its discretion, allow a nolle prosequi to be entered in order that he may be prosecuted for the greater offense.

G. L. § 2545.

SEC. 2376. Defense in prosecution for libel. If a person is prosecuted by information or indictment for uttering and publishing a libel, or for defaming the civil authority of the state, he may, under a plea of not guilty, give in evidence to the jury the truth of the words contained in such supposed libel, as set forth in the information or indictment; and if he proves their truth to the satisfaction of the jury, it shall in its verdict find the respondent not guilty.

G. L. § 2546.
70 Vt. 247.
85 Vt. 115.

SEC. 2377. Indictment for murder or manslaughter. In an indictment for murder or manslaughter, the manner in which or the means by which the death of the deceased was caused, need not be set forth; but it shall be sufficient in an indictment for murder to charge that the respondent did feloniously, wilfully and of his malice aforethought kill and murder the deceased, and in an indictment for manslaughter to charge that the respondent did feloniously kill and slay the deceased.

*See Sec. 1424.

SEC. 2378. Description of paper forged or counterfeited. In a complaint, information or indictment for forgery or counterfeiting, or for uttering and publishing as true an instrument, document or paper which may be the subject of the offense of forgery or counterfeiting, it shall be sufficient to describe such instrument, document or paper by the name or designation by which it is usually known, or by the purport thereof, without setting forth a copy or facsimile or otherwise describing the same or its value; and a misnaming of such instrument, document or paper shall not affect the cause, provided, that as set forth, the same appears to be any one of the instruments, documents or papers which is made a subject of the offense of forgery or counterfeiting.

SEC. 2379. Description of money stolen. In a complaint, information or indictment for larceny, in which it is necessary to make an averment as to money, or bank bills or promissory notes, issued or purporting to be issued by an incorporated bank or banking institution, or currency authorized to be circulated and circulating as money, it shall be sufficient to describe such money, bank bills, bank notes or currency, simply as money, without specifying any particular coin, bank bill, bank note or currency; and such allegation, so far as regards the description of property, shall be sustained by proof of any amount of coin, or of any bank bill, bank note or piece of currency, although the particular species of coin of which such amount was composed, or the particular nature of such bank bill, bank note or currency, is not proved.

SEC. 2380. Joinder of counts for larceny and receiving stolen goods. In a complaint, information or indictment for larceny against one or more persons, counts may be added for buying, receiving or aiding in the concealment of property stolen, or a part thereof, knowing the same to be stolen; and in such cause the prosecutor shall not be put to his election, but the jury may convict or acquit, upon one or more of the counts, one or more of the defendants, according to the proofs.

SEC. 2381. Certain omissions not to affect indictment. A complaint, information or indictment shall not be held bad, nor shall the trial, judgment or other proceedings thereon be affected, by reason of the omission of the words "as appears of record," or of the words "with force and arms," or for the insertion of the words "against the form of the statute," instead of the words "against the form of the statutes," or vice versa, or for the omission of such words, or for omitting to state the time at which the offense was committed in any case where time is not the essence of the offense, or for stating the time imperfectly, or upon a day in the future, or upon an impossible day, or a day that has never happened, or for want of a proper or perfect venue, where it shall appear by the complaint, information or indictment, that the court has jurisdiction of the offense.

SEC. 2382. Certain variances cured by amendment. If, on the trial of a complaint, information or indictment, there appears to be a variance between the averments therein and the evidence offered in proof, in the name or description of a place mentioned, or of a person alleged to be the owner of property which forms the subject of an offense charged, or which is alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offense, or in the christian name or surname, or both christian name and surname, or other description of a person named or described, or in the name or description of any matter or thing whatsoever, the court before whom such trial is had, if it considers such variance not material and that the respondent cannot be prejudiced thereby in his defense upon the merits, may order the complaint, information or indictment to be amended, according to the proof, by some officer of the court, in that part wherein the variance occurs, on

G. L. § 2551.
64 Vt. 405.
64 Vt. 569.
71 Vt. 405.
72 Vt. 46.
72 Vt. 410.
75 Vt. 202.
75 Vt. 308.

such terms as to a postponement of the trial as the court thinks reasonable; and after amendment, the trial shall proceed in the same manner and with the same consequences as if such variance had not occurred.

Witnesses and Depositions.

G. L. § 2554.
40 Vt. 555.
65 Vt. 66.
104 Vt. 379.

SEC. 2383. Respondent a competent witness. In the trial of complaints, informations, indictments and other proceedings against persons charged with crimes or offenses, the person so charged shall, at his own request and not otherwise, be deemed a competent witness, the credit to be given to his testimony being left solely to the jury, under the instructions of the court, but the refusal of such person to testify shall not be considered by the jury as evidence against him.

G. L. § 2555.

SEC. 2384. Witnesses for poor respondent summoned by state.* When it appears to a county court in which a criminal cause is pending, that the respondent is from poverty unable to procure the attendance of witnesses in his behalf, such court may order as many of such witnesses to be summoned by the prosecuting officer, at the expense of the state, as it judges necessary to secure the respondent an impartial trial.

G. L. § 2556.

SEC. 2385. Nonresident witnesses, testimony of, how taken. When an issue of fact is joined upon a complaint, information or indictment, the court may, on application of the respondent, grant a commission to examine material witnesses residing out of the state, and the prosecuting officer may join in such commission and name material witnesses to be examined on the part of the state.

G. L. § 2557.

SEC. 2386. Recognizance may be required of witness. In a proceeding before a court or magistrate, for the investigation or prosecution of a criminal offense, the court or magistrate may order any witness appearing before such court or magistrate to enter into a sufficient recognizance with surety for his appearance before any court or magistrate where his attendance in such investigation or prosecution is necessary; and if the witness refuses to enter into such recognizance with surety, he may be committed to jail in the county where his attendance as a witness is required, on a warrant of the court or magistrate making the order, and there detained until such time as his attendance to testify is required.

Sending Witnesses Out of the State.

1931, No. 39, § 1.
G. L. § 2558.

SEC. 2387. Summons. If the clerk of a court in another of the United States certifies that there is a criminal cause pending in such court, and that a person residing in the state is supposed to be a material witness therein, or if a judge of a court or a magistrate, in another of the United States, certifies that a grand jury is or will be in attendance upon such court and a subpoena has been issued for a person residing in this state who is supposed to be a material witness to the investigation of the grand jury, a justice or municipal judge shall, upon such certificate, issue a summons requiring such witness to appear and testify at such court.

1931, No. 39, § 2.
G. L. § 2559.

SEC. 2388. Penalty for not obeying. A person on whom such a summons has been served, and having been tendered twenty cents for each mile to be traveled to and from such court and ten dollars for each day his attendance is required, who unreasonably neglects to attend and testify in such court shall be fined not more than five hundred dollars.

Summons to Testify in State.

G. L. § 2560.
10 Vt. 493.
56 Vt. 698.

SEC. 2389. Penalty for not obeying. A person legally summoned to attend a court in this state to testify in a criminal cause, who wilfully

*See Sec. 1424.

or wrongfully refuses to attend and testify, shall be imprisoned not more than six months or fined not more than one hundred dollars nor less than ten dollars, or both.

SEC. 2390. Counseling or aiding in nonattendance; penalty. G. L. § 2561. A person who knowingly and wrongfully counsels, aids or assists a person, so summoned to testify, to absent himself from attendance before such court, shall be fined not more than fifty dollars nor less than ten dollars.

Depositions.

SEC. 2391. To perpetuate testimony. A person complained of, informed against or indicted for a crime may make affidavit before a justice of the supreme court, a superior judge or a judge of the county court, that the testimony of certain witnesses is material in his defense, and thereupon the same proceedings may be had as in perpetuating testimony in civil causes.

SEC. 2392. Notice. Reasonable notice shall be given to the prosecuting attorney of the time and place when and where the witnesses will be examined, specifying therein the complaint, information or indictment on the trial of which such testimony is to be used and the names of the witnesses proposed to be examined.

SEC. 2393. Admissible on trial. Depositions so taken to be used in criminal causes, if taken at least ten days before the session of the court in which the same are offered as evidence, may be admitted on the trial of the complaint, information or indictment relative to which they are to be used, subject to the conditions provided as to similar depositions to be used in civil causes.

Proceedings Before a Municipal Court in Criminal Causes.

SEC. 2394. Jurisdiction; misdemeanors. A municipal court shall have jurisdiction, throughout the county, wherein located, except as otherwise provided, to try and finally determine prosecutions for misdemeanors committed within such county, and an appeal shall not be allowed from the judgment of such court.

SEC. 2395. Same. A municipal court shall have jurisdiction to try and finally determine prosecutions for violations of by-laws or ordinances of a village or city within the county, except as otherwise provided.

SEC. 2396. Same. A municipal court shall have jurisdiction to render judgment and pass sentence upon a plea of guilty in prosecutions for felony, wherein the maximum penalty of imprisonment is for less than life.

Proceedings Before Justices of the Peace in Criminal Causes and Appeals Therefrom.

SEC. 2397. Jurisdiction. Except as otherwise provided, a justice may try and determine prosecutions and actions of a criminal nature, only where the punishment is by fine not exceeding one hundred dollars, and issue a warrant to carry the judgment into effect in case an appeal is not taken, and shall have the same authority in other criminal causes where jurisdiction is given him.

SEC. 2398. Testimony to be written. A justice shall take in writing the substance of the evidence of witnesses testifying before him in a criminal cause.

SEC. 2399. Testimony to be filed with clerk, if appeal taken. When a respondent appeals from the judgment of a justice, in a cause

within his jurisdiction to try and determine, the justice shall, at least two days before the sitting of the court to which appeal is taken, file with the clerk thereof the evidence so taken by him.

G. L. § 2573.

G. L. § 2574.
35 Vt. 562.
42 Vt. 430.
43 Vt. 265.
55 Vt. 1.
60 Vt. 199.
64 Vt. 203.

G. L. § 2575.

SEC. 2400. Jury, how drawn. When a criminal cause is tried by jury before a justice, the jury shall be drawn as in civil causes.

SEC. 2401. Appeal, when allowed. An appeal shall not be allowed in a criminal cause where the respondent is acquitted or where the respondent pleads guilty; but the respondent may appeal from a judgment or sentence of a justice against him in all other causes, if the appeal is claimed within two hours after the rendition thereof.

SEC. 2402. Appeal from justice, where heard. In prosecutions before a justice in which an appeal is taken from his judgment and sentence, such appeal shall lie to a municipal court within the same county, if there is such a court therein. Such appeal shall be heard at the county courthouse in the county where the complaint was first heard, at such time as the judge of such court shall determine; provided however, that the judge shall not compel a respondent to go to trial within twenty days from the time of entering such appeal.

G. L. § 2576.

SEC. 2403. Appeal to county court, when. In counties not having a municipal court, the appeal shall be taken to the county court.

G. L. § 2577.

SEC. 2404. Appeals; time for entering. Appeals to a county or municipal court shall be entered within twenty-one days from the date of the judgment or sentence appealed from.

G. L. § 2578.
10 Vt. 544.
44 Vt. 363.
47 Vt. 62.

SEC. 2405. Recognizance; entry for affirmance. A party appealing from a justice shall not be released from custody, unless at the time of the appeal he gives surety, by way of recognizance to the state, county, town or village, as the case may be, in which the offense is charged to have been committed, if the prosecution is on complaint or information of a complaining or informing officer, or, if otherwise, to the prosecutor, conditioned that the respondent will personally appear before the court to which the cause is appealed, and there prosecute his appeal to effect and abide the order of court thereon. If the respondent does not enter his appeal in a proper court within the time prescribed, the appellee may enter the same for affirmance; and, if cause is not shown to the contrary, the same shall be affirmed with additional costs.

G. L. § 2579.

SEC. 2406. Same; how prosecuted after affirmance. When such judgment or sentence is affirmed, the recognizance taken by the justice shall be prosecuted as in civil causes.

G. L. § 2580.
63 Vt. 537.
71 Vt. 476.

SEC. 2407. Appeal not entered, warrant may issue. If the respondent in a criminal cause appeals from the judgment or sentence of a justice, the appeal shall suspend the judgment or sentence, but shall not vacate it; and if neither the prosecuting officer nor the respondent enters the cause in court within twenty-one days from the day of such judgment or sentence, the justice shall issue a warrant to carry such judgment and sentence into effect as if an appeal had not been taken.

G. L. § 2581.
64 Vt. 203.

SEC. 2408. Recognizance, prosecution of. If such appeal is not entered for affirmance, the prosecuting officer may have an action of contract, in the name of the state, against the bail, upon the recognizance for the appeal. The judgment shall be for such sum as is just, which, if the respondent cannot be found, shall be the amount of fine, costs and interest; and, if the sentence was imprisonment, such sum as the court adjudges equitable. A judgment against the bail, and payment of the same, shall not relieve the respondent from the sentence of imprisonment.

G. L. § 2582.
44 Vt. 363.
63 Vt. 537.

SEC. 2409. Payment of fine after appeal; effect. The respondent in a criminal cause appealed from the decision of a justice may, where

the sentence is for fine and costs only, tender or pay to such justice the fine and costs at any time before such appeal is entered in court and within twenty-one days from the day of the judgment appealed from; and the justice shall receive and enter the same on the records, which shall be a full satisfaction of the judgment.

SEC. 2410. Waiving appeal; effect. A respondent in a criminal cause appealed from the decision of a justice may, at any time before such appeal is entered in court and within twenty-one days from the day of the judgment appealed from, personally appear before the justice and waive his appeal, and thereupon the justice shall issue a warrant to carry the judgment into effect as if an appeal had not been taken. G. L. § 2583.

Binding Over to County and Municipal Courts.

SEC. 2411. Powers as to. A justice's or municipal court may determine, to be apprehended and committed to jail or bound over with sufficient sureties by way of recognizance, for his appearance at the next term of the county court within the county in which such cause is triable, to answer to such information or indictment as may be brought against him, and from term to term thereafter; provided however, that in proceedings before a justice, if there is a municipal court within the county having jurisdiction to try and determine the cause, the respondent shall be bound over to such court to appear on the last Wednesday of the month next following, to answer to such complaint or information as may be brought against him, and from day to day thereafter; but if there is not a municipal court within the county, or if there is not such a court therein having jurisdiction to try and determine such cause, the respondent shall be bound over to the county court as herein provided. G. L. § 2584.
82 Vt. 37.
90 Vt. 150.

SEC. 2412. Copy of record to be filed. The justice or court shall, in such cases, file with the clerk of the county court, if the respondent is bound over to such court, the evidence taken by him and a certified copy of the records and process in the cause within thirty days after the trial or examination, but if there are not thirty days before the next term of the county court, then on the first day of the term; but if the respondent is bound over to a municipal court, the justice shall file such copy with the judge or clerk of such court within ten days after the trial or examination. G. L. § 2585.

SEC. 2413. Respondent may waive examination. A person arrested and brought before a justice's or municipal court, charged with an offense exceeding the jurisdiction of such court to try and determine, may waive examination and shall thereupon be committed to jail or bound over as provided in the second preceding section. G. L. § 2586.

Sureties of Peace, and on Continuance.

SEC. 2414. Sureties of the peace. A justice's or municipal court may order a person, arrested for a criminal offense, to find sureties that he will keep the peace, when it is necessary, and may commit him to jail until he complies. G. L. § 2587.

SEC. 2415. Bail, when hearing postponed. When a justice's or municipal court postpones the trial of a criminal cause, or the examination of a person charged with a criminal offense which is bailable, the court may take security of the person by way of recognizance to the state, for his appearance before the court, on the day to which the trial or examination is postponed. G. L. § 2588.
85 Vt. 484.

Search Warrants.

G. L. § 2589.

SEC. 2416. **For daytime.** A justice of the peace or a municipal judge may grant a warrant for searching, in the daytime, a dwelling house or other place where personal property, stolen, embezzled or obtained by false tokens, is suspected to be concealed; and also for searching for counterfeit coin, forged or counterfeit bank bills or notes, forged or counterfeit public or corporate securities and the tools and materials for such forgery or counterfeiting; gaming implements and apparatus; obscene books, pictures, figures or descriptions; lottery tickets or materials for a lottery; fish, quadrupeds or birds protected by title 25 and believed to have been taken contrary to law, or implements or devices for taking such fish, quadrupeds or birds, subject to seizure or unlawfully possessed; where the discovery of such articles, fish, quadrupeds or birds may tend to convict a person of an offense.

G. L. § 2590.

SEC. 2417. **Oath.** Such search warrant shall not be granted except upon the oath of a state's attorney, grand juror or some creditable person, that he has reason to suspect and does suspect that such articles, fish, quadrupeds or birds are concealed in the place to be searched.

G. L. § 2591.

SEC. 2418. **For nighttime.** When satisfactory evidence is adduced to two justices of the peace, or to a municipal judge, that a person against whom a warrant for a criminal offense has been issued, is secreted, or that property that has been stolen, embezzled or obtained by false tokens, or any of the articles, fish, quadrupeds or birds mentioned in the second preceding section are concealed in a particular house or place, when the discovery of such articles, fish, quadrupeds or birds may tend to convict a person of an offense, a warrant may issue for the search of such house or place, in the nighttime.

G. L. § 2592.
72 Vt. 55.

SEC. 2419. **Fees paid by state, when.** When the state's attorney of a county or the town grand juror of a town in which a search is to be made, under the provisions of the three preceding sections, applies for such a warrant or certifies in writing on the warrant that the search ought to be made, the fees for such warrant and the service thereof shall be paid by the state.

Justices to Make Report to Town Treasurer, Etc.

G. L. § 2593.

SEC. 2420. **Fines and penalties.** A justice shall annually, on or before February 10, deliver an abstract of the fines and penalties imposed by him in the preceding year, ending January 31, to the treasurer of the village, town or county to which the fine or penalty belongs, with the name of the person to whom the execution or warrant for the collection of the same was delivered, and, on failure so to do, shall forfeit to the use of such village, town or county a sum equal to the fine or penalty, to be recovered in an action of tort, on this statute.

G. L. § 2594.

SEC. 2421. **Statistics and costs.** A justice shall furnish to the treasurer of the town, liable to pay the costs of prosecution, a written statement of criminal prosecutions tried by him, giving the name of the person prosecuted, his offense and sentence; the name of the prosecuting officer, the officer making the arrest and the witnesses, and the fees due each; also a description of the orders and the amount thereof drawn by him in such prosecution; and such statement shall be made within ten days after the trial.

G. L. § 2595.

SEC. 2422. **Penalty.** A justice who does not comply with the provisions of the preceding section shall be fined five dollars.

Questions of Law in Supreme Court.

SEC. 2423. **Passing cause to supreme court.** Questions of law decided by the county court, arising upon demurrer, trial by jury or motion in arrest, in a prosecution by information or indictment for a crime or misdemeanor, shall, after a verdict of guilty is returned, upon motion of the respondent, be allowed and placed upon the record; and the same shall thereupon pass to the supreme court for final decision; and judgment, sentence and execution shall be respited and stayed in capital causes, and in other causes only at the discretion of the court.

SEC. 2424. **Proceeding in supreme court.** If, upon the inspection of the record in a cause where judgment, sentence and execution have been respited and stayed, the supreme court is of opinion that judgment ought to be rendered upon the verdict, it shall render judgment and sentence thereon and cause execution thereof to be done; but when the county court has passed judgment and sentence upon the verdict of the jury, and the supreme court does not find an error in the proceedings of the county court, it shall adjudge that the exceptions be overruled; but if it finds error, the judgment and sentence of the county court shall be reversed and judgment of acquittal rendered by the supreme court, or the cause remanded to the county court for a new trial.

SEC. 2425. **Exceptions to supreme court; remand.** Questions of law decided against the state by a county or municipal court, in a prosecution by complaint, information or indictment for a felony or misdemeanor, shall, upon exceptions taken by the state, be allowed and placed upon the record before final judgment; and, when so taken and allowed, such court may, in its discretion, pass the same to the supreme court before final judgment. The supreme court shall hear and determine the questions upon such exceptions and render final judgment thereon, or remand the cause to such county or municipal court for further trial or other proceedings, as justice and the state of the cause may require.

SEC. 2426. **May be heard in absence of respondent.** Questions of law for final decision in the supreme court may, in the discretion of the court, be heard in the absence of the respondent.

SEC. 2427. **Bail forfeited in supreme court.** When a respondent in a criminal prosecution, after conviction in a municipal or county court, and after going at large upon bail for his appearance before the supreme court, forfeits his bail, the supreme court shall render judgment that the bonds are forfeited, adjudge that the respondent has waived his exceptions and order the cause to be remanded to the court for sentence or such further proceedings as the law requires.

SEC. 2428. **No writ of error.** A writ of error shall not be allowed in a criminal cause prosecuted by complaint, information or indictment.

Proceedings in Case of Insanity.

SEC. 2429. **Commitment for observation.** When a person is indicted or informed against for a criminal offense, or is committed to jail on a criminal charge by a justice's or municipal court, the presiding judge of the county court before whom the person is to be tried, may, in term time or vacation, if a plea of insanity is made in court or if he is satisfied that a plea of insanity will be made, order the person into the care of the superintendent of the Vermont state hospital for the insane, to be detained and observed by the superintendent until further order of the judge or of such county court, that the truth or falsity of such plea may be ascertained.

G. L. § 2603.
84 Vt. 363.

SEC. 2430. When person is not indicted because insane; confinement. When a person held in prison on a charge of having committed a criminal offense is not indicted by the grand jury by reason of insanity, the grand jury shall so certify to the court, and thereupon, if the discharge or going at large of the insane person is considered by the court dangerous to the community, the court may order him confined in the county jail, or in the Vermont state hospital for the insane, or some other suitable place, at his own expense, if he has estate sufficient for that purpose, and if not, at the expense of the state.

G. L. § 2604.

SEC. 2431.* On acquittal by reason of insanity; confinement. When a person, tried on a complaint, information or indictment for a criminal offense, is acquitted by the jury by reason of insanity, the jury, in giving its verdict of not guilty, shall state that it is given for such cause, and thereupon, if the discharge or going at large of the insane person is considered dangerous to the community, the court may, in its discretion, order him to be confined in the state prison, or in the Vermont state hospital for the insane, or in some other suitable place, on such terms as the court directs, and at his own expense, if he has sufficient estate for that purpose, and if not, at the expense of the state.

G. L. § 2604.

SEC. 2432.* Same; change of place of confinement. A superior judge, upon hearing, after twelve days' notice to the state's attorney of the county in which the case was tried, may, for good cause shown, order a change of the place of confinement of a person confined under the provisions of the preceding section.

G. L. § 2605.

SEC. 2433. Insane respondent may petition for discharge. A person confined under an order of court, pursuant to the three preceding sections, shall be discharged from confinement only by order of the county court for the county in which the order for confinement was made, upon petition therefor, made returnable to a stated term of such court, and served upon the state's attorney for that county at least twelve days before the beginning of the term. This section shall not affect the right of a person so confined to sue out a writ of habeas corpus.

G. L. § 2606.

SEC. 2434. Same; by supervisors. If the person has no estate, the petition may be brought in his behalf by the supervisors of the insane at the expense of the state; in which case, recognizance for costs shall not be required.

G. L. § 2607.

SEC. 2435. Witness for respondent at expense of state, when. If it appears to the court that the person is from poverty unable to procure the attendance of witnesses in his behalf, it may order such witnesses subpoenaed at the expense of the state as it deems necessary to secure the petitioner an impartial hearing. The witnesses shall be paid as in other state causes.

G. L. § 2608.

SEC. 2436. Court may order respondent produced. Such court may issue an order, directed to any sheriff or constable in the state, commanding him to bring the person before the court for hearing; and the officer executing the order shall deliver an attested copy thereof to the custodian of the person, who shall thereupon surrender him to the officer.

G. L. § 2609.

SEC. 2437. Hearing; discharged or recommitted. If, upon hearing, it appears that the person has become sane, and the court considers that his release or going at large is not dangerous to the community, it shall order his discharge from confinement; otherwise the petition shall be dismissed and the person, if before the court, shall be recommitted to the place of confinement from which he was brought.

G. L. § 2610.

SEC. 2438. Costs. If, upon hearing, it appears that the person has

*See Sec. 8799.

sufficient estate, the court may, in its discretion, upon dismissing the petition, award costs against such estate and issue execution therefor.

SEC. 2439. Change of terms of confinement; petition. When a person acquitted of a criminal offense because of his insanity is confined by order of the court, such court may thereafter alter the terms on which the person is confined, upon petition therefor, returnable to a stated term of the court and served upon the state's attorney for the county in which the order was made, at least twelve days before the beginning of the term.

Miscellaneous.

SEC. 2440. Trial for murder; conviction may be for what. Under an indictment for murder, the respondent may be convicted of murder in the first degree, murder in the second degree or of manslaughter, as the case may be upon the proofs. G. L. § 2612.
53 Vt. 560.
58 Vt. 457.
85 Vt. 115.

SEC. 2441. Same; burglary or robbery. A person arraigned and tried for murder may be convicted of manslaughter, if the jury finds that offense proved; and a person arraigned and tried for burglary or robbery may be convicted of larceny, if the jury finds that offense proved. G. L. § 2613.
53 Vt. 560.

SEC. 2442. Several indicted for jointly receiving stolen goods; one or more may be convicted. On trial of two or more persons upon complaint, information or indictment, for jointly buying, receiving or aiding in the concealment of stolen property, knowing the same to be stolen, if it is proved that one or more of the persons separately bought, received or aided in the concealment of any of such property, the jury may convict such of the persons as are proved to have bought, received or aided in the concealment of any part of such property, knowing the same to have been stolen. G. L. § 2614.

SEC. 2443. Allegations of ownership; extent of proof to support. In the prosecution of an offense committed upon, or in relation to, or in any way affecting, real estate, or an offense committed in stealing, embezzling, injuring or fraudulently receiving or concealing money or other personal estate, it shall be sufficient and not a variance if it is proved on trial that, at the time when the offense was committed, the actual or constructive possession, or the general or special property in whole or in part of such real or personal estate, was in the person alleged in the complaint, information or indictment, to be the owner thereof. G. L. § 2615.
64 Vt. 405.
89 Vt. 148.

SEC. 2444. Intent to defraud, allegation and proof. When an intent to defraud is required to constitute a criminal offense, it shall be sufficient to allege in the complaint, information or indictment an intent to defraud, without naming the person or body corporate intended to be defrauded; and on trial it shall be sufficient and shall not be deemed a variance if there appears to have been an intent to defraud the United States, a state, county, town, city, district, a body corporate, a public officer in his official capacity, a partnership or members thereof or a person. G. L. § 2616.

SEC. 2445. Conviction of theft need not be averred or proved in certain prosecutions. In a prosecution for buying, receiving or aiding in the concealment of money or other property known to have been stolen, it shall not be necessary to aver nor on trial to prove that the person who stole the property has been convicted. G. L. § 2617.

SEC. 2446. Respondent on trial ordered into custody, when. On the trial of a person on information or indictment for a felony, the court may, in its discretion, order the person into custody, to be retained in discharge of his recognizance. G. L. § 2618.
73 Vt. 149.

G. L. § 2619.
50 Vt. 316.
58 Vt. 378.
61 Vt. 153.

SEC. 2447. Witnesses examined separately, when. On the trial of a person for a criminal offense, or on the examination of a person charged therewith before a justice's or municipal court, the court shall, on the request of the prosecuting attorney or the party accused, have the witnesses examined separately and apart from each other.

G. L. § 2620.

SEC. 2448. Expert evidence. A superior judge or the attorney general may, to prevent a failure of justice, order an examination to be made by an expert or experts, either within or without the state, in the investigation of a crime supposed to have been committed within the state. Such order shall be made only on the petition of the state's attorney for the county in which the crime is supposed to have been committed, setting forth the facts because of which the order is applied for, and verified by affidavit, and shall name the expert or experts by whom the examination is to be made, and limit the expense of the examination, and such expense shall be paid in the manner provided for the payment of witness fees in state causes in the county court.

G. L. § 2621.

SEC. 2449. Autopsy. A superior judge or the attorney general may, to prevent a failure of justice, upon the petition of the state's attorney, order an autopsy to be made in the preparation of a state cause for trial in any court, and fix the compensation therefor, not to exceed twenty-five dollars.

CHAPTER 103.

(2450-2460)

LIMITATION OF CRIMINAL PROSECUTIONS AND ACTIONS ON PENAL STATUTES.

G. L. § 2622.
1 Tyl. 283.

SEC. 2450. Felonies and misdemeanors in general. Prosecutions for a felony or misdemeanor, other than larceny, robbery, burglary, forgery, arson and murder, shall be commenced within three years after the commission of the offense, and not after.

G. L. § 2623.

SEC. 2451. Larceny, robbery, burglary and forgery. Prosecutions for larceny, robbery, burglary and forgery shall be commenced within six years after the commission of the offense, and not after.

G. L. § 2624.
56 Vt. 111.
80 Vt. 510.

SEC. 2452. Proceedings begun after time limited, void. If a prosecution for a felony or misdemeanor, other than arson and murder, is commenced after the time limited by the two preceding sections, such proceedings shall be void.

G. L. § 2625.

SEC. 2453. If prosecutor has penalty. Actions upon a statute for a penalty or forfeiture given in whole or in part to a person who prosecutes for the same, shall be commenced within one year after the commission of the offense, and not after.

G. L. § 2626.
43 Vt. 587.

SEC. 2454. If state, county or town has penalty. Actions founded upon a statute for a penalty or forfeiture given in whole or in part to the state, county or town shall be commenced within two years after the commission of the offense, and not after, unless otherwise provided.

G. L. § 2627.
19 Vt. 559.
55 Vt. 61.
80 Vt. 510.

SEC. 2455. If party aggrieved has penalty. Actions upon a statute for a penalty or forfeiture given in whole or in part to the party aggrieved shall be commenced within four years after the commission of the offense, and not after.

G. L. § 2628.

SEC. 2456. Prosecutions limited by other statutes. The six preceding sections shall not apply to an action, complaint, information or indictment limited by a statute to be commenced within a shorter or longer time than is prescribed in such sections.

SEC. 2457. Time of exhibiting complaint, etc., to be minuted. When a complaint, information or indictment is exhibited in a cause mentioned in this chapter, the clerk of the court or magistrate to whom it is exhibited shall, at the time, make a minute thereon in writing, under his official signature, of the day, month and year when the same was exhibited.

77 Vt. 258. 80 Vt. 510.

SEC. 2458. Time of signing writ to be minuted. When an action is commenced in a cause mentioned in this chapter, the clerk or magistrate signing the writ shall enter upon it a minute of the day, month and year when the same was signed.

16 Vt. 604. 19 Vt. 559. 46 Vt. 90.
17 Vt. 48. 26 Vt. 178. 77 Vt. 258.

SEC. 2459. Effect of omitting such minute. A complaint, information, indictment or writ on which a minute of the day, month and year is not made, as provided by the two preceding sections, shall, on motion, be dismissed.

SEC. 2460. Actions against moneyed corporations for penalty. The provisions of this chapter shall not apply to actions against moneyed corporations, or against the directors or stockholders thereof, to recover a penalty or forfeiture imposed, or to enforce a liability created by the act of incorporation or other law; but such actions shall be brought within six years after the discovery, by the aggrieved party, of the facts upon which the penalty or forfeiture attached, or by which the liability was created.

CHAPTER 104.

(2461-2464)

NEW TRIALS IN CRIMINAL CAUSES.

SEC. 2461. Provisions applicable; recognizance. The provisions for new trials in civil causes shall govern applications for new trials by respondents in criminal causes, except as hereinafter provided; but the magistrate signing the citation may or may not, in his discretion, require a recognizance for costs.

SEC. 2462. Petition in capital cases after time limited. When a person is convicted of a capital offense and sentenced to suffer the punishment of death, he may bring a petition for a new trial at any time before execution of the sentence. Such petition shall set forth the grounds for a new trial; and, if for newly discovered evidence, the same shall be attached thereto, with a copy of the evidence taken at his trial.

SEC. 2463. Filing petition; staying execution; former adjudication as a bar. Such petition shall be presented to two justices of the supreme court, who, upon examination thereof, shall determine whether it shall be filed, and shall certify their determination thereon; and, if the petition is allowed to be filed, such justices shall make an order staying the execution of sentence until after the time fixed for hearing the petition by the supreme court. An adjudication of a former petition shall not be a bar to a subsequent one based upon evidence discovered after the former adjudication.

SEC. 2464. Appointing another time for execution. When the trial of the petition does not take place until after the time appointed for execution, if a new trial is refused, the court hearing the petition shall appoint a time for executing sentence, and issue its order to the sheriff for that purpose.

CHAPTER 105.

(2465-2476)

JUDGMENT AND EXECUTION IN CRIMINAL CAUSES.

Effect of Judgment.

G. L. § 2637.
86 Vt. 130.

SEC. 2465. Sentence to successive terms of imprisonment. A person convicted of two or more offenses punishable by imprisonment in the state prison or house of correction, and sentenced at the same time for more than one of such offenses, may be sentenced to as many terms of imprisonment as there are offenses of which he is convicted, one term being limited to commence upon the expiration of another, in the order designated by the court.

G. L. § 2638.

SEC. 2466. Copy of indictment, testimony and charge to be filed in certain cases. When a person is sentenced to death or imprisonment for life in the state prison, the clerk of the court in which the person was tried shall procure a copy of the indictment, testimony on trial and charge of the court, and file the same in his office.

1933, No. 157, § 2289.
1929, No. 134, § 1.

SEC. 2467. Copy of judgment record for commissioner of public welfare. The clerks of county and municipal courts shall forward to the commissioner of public welfare on blanks to be supplied by him, a certified copy of such portions of the records of judgments rendered in their respective courts in all cases of felony in which a conviction or a plea of guilty is had, as the commissioner may require. The copies shall be preserved in the office of the commissioner. Fees of fifty cents each for such certified copies shall be allowed by the auditor of accounts in settlement of the accounts of such courts.

G. L. § 2639.

SEC. 2468. Imprisonment in state prison to be at hard labor. A person convicted of an offense punishable by imprisonment in the state prison shall be confined at hard labor during such imprisonment.

G. L. § 2640.

SEC. 2469. Effect of sentence to state prison for life. A person sentenced to imprisonment at hard labor during life in the state prison shall be considered as dead, so far as relates to his marriage or the settlement of his estate.

Execution.

1933, No. 157, § 2292.
1927, No. 131, § 2.
G. L. § 2641.

SEC. 2470. Capital crime; time set for, warrant; reprieve. In pronouncing sentence of death upon a person who is convicted of a capital crime, the court shall appoint a week within which the sentence shall be executed; and the court shall, at the time of such sentence, order a warrant to be issued by the clerk, under the seal of the court for the county in which such sentence is passed, to be directed to the warden of the state prison, stating the conviction and sentence and commanding him to cause execution to be done in accordance with the provisions of such sentence, upon a day within the week so appointed. The clerk shall, at the same time, transmit to the sheriff of the county in which such sentence is passed a certified copy of such warrant. The sentence of death shall be executed by the warden of the state prison, or by a person acting under his direction, within the week appointed by the court, unless a reprieve is granted or the convict is pardoned. If a reprieve is granted, the sentence of death shall be executed within the week beginning on the day next after the day on which the term of respite expires, and such sentence shall be executed on such day within such week as the warden elects; but previous announcement thereof shall not be made, except to such persons as are to be present.

SEC. 2471. Pardon; governor to issue his warrant. If such convict is pardoned by the governor, the governor shall forthwith issue his warrant to the warden of the state prison superseding the original warrant provided for in the preceding section.

SEC. 2472. Place of. The sentence of death shall be carried into effect within the walls of the state prison or in the enclosed yard of the same, in rooms provided and furnished for that purpose.

SEC. 2473. Manner of confinement. When the sentence of death is imposed, the court shall, at the same time, sentence the respondent to hard labor in the state prison until thirty days before the week fixed in the sentence for the execution thereof, and shall also sentence him to solitary confinement in the state prison from the expiration of the sentence to hard labor until the time of execution.

SEC. 2474. Execution attended by whom. There shall be present at the execution of the sentence of death, the warden of the state prison, or, in case of his disability, the keeper, the person who is to perform the execution and his assistant, such officers of the state prison as the officer in charge of such execution shall designate, the prison physician, and one other physician whom the officer in charge approves. The physicians present shall be the legal witnesses of the execution. There may also be present the sheriff of the county in which the condemned was convicted, or one of his deputies approved by him, the prison chaplain or such other clergyman as the condemned may desire, and not more than three other persons to be selected by the warden. There shall be paid to the person actually performing the execution and to his assistant such sums for services and expenses as the commissioner of public welfare shall approve.

SEC. 2475. Manner of execution. The punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of such current shall be continued until such convict is dead.

SEC. 2476. Returns of sheriff. When the warden of the state prison inflicts the punishment of death upon a convict, in obedience to a warrant as aforesaid, he shall forthwith return a copy thereof with his doings thereon to the office of the secretary of state, and shall forthwith return the original warrant with his doings thereon to the court from which it issued, and the clerk thereof shall subjoin to the record of the sentence a brief abstract of the warden's return upon such warrant.

CHAPTER 106.

(2477-2505)

FINES, COSTS AND RECOGNIZANCES IN CRIMINAL CAUSES.

Collection of Fines.

SEC. 2477. By complaint, information or indictment. Fines, forfeitures and penalties incurred or imposed by statute may be recovered by complaint, information or indictment, unless some other mode of recovery is specially provided.

SEC. 2478. Costs of prosecution include commitment and keeping. The costs of committing, keeping and supporting in jail a person charged with a criminal offense, before and after judgment, shall be deemed a part of the costs of prosecution.

SEC. 2479. Fine to be paid or secured; body or estate liable. A person fined for the breach of a penal law or other offense shall pay such

fine with the costs of prosecution, or give sufficient security for the same, or shall, by order of the court or justice before whom the trial is had, be imprisoned as provided in such case, or be liable to have his estate sold therefor.

G. L. § 2651.

SEC. 2480. Mittimus may issue against body or estate. A mittimus issued by a court or justice for the collection of a penalty, fine and costs, or for costs in criminal prosecutions, may, in the discretion of such court, in addition to the prescribed form, be issued against the goods, chattels or lands of the respondent in the form in which executions are issued; and such mittimus may be levied upon the goods, chattels or lands of the respondent, and the same sold in satisfaction thereof as in the sale of personal property or real estate upon execution.

To What Treasury Penalty Belongs.

SEC. 2481. When to town or village; when to state. Fines, forfeitures and penalties, imposed for an offense, or for the breach of a penal law, with costs, unless the same are otherwise disposed of by law, shall, if the prosecution is commenced and tried before a justice, belong and be paid to the town or, if the prosecution is upon complaint of a village police officer, to the village, in which the offense is committed; but if the prosecution is commenced and tried before a municipal or county court, the same shall belong and be paid to the state; provided that in causes appealed to and entered in a municipal or county court, the fine and costs, when imposed, shall be paid to the state; and provided further that fines imposed by a municipal court for violation of a village or city ordinance, with costs, shall belong and be paid to the village or city.

G. L. § 2652.
59 Vt. 332.
74 Vt. 315.

SEC. 2482. To state only. All fines and costs collected in prosecutions under titles 22 and 25 shall belong and be paid to the state.

G. L. § 2653.

SEC. 2483. From unorganized towns and gores. Fines, forfeitures and penalties imposed on a person residing in an unorganized town or gore, with costs, unless otherwise disposed of by law, shall belong and be paid to the state.

G. L. § 2654.

Provisions as to Payment of Costs.

SEC. 2484. Paid from treasury to which penalty belongs; exception. The costs of prosecution for the breach of a penal law or other offense shall be paid out of the treasury to which the fine in case of conviction would belong; but, if the respondent is committed to the house of correction, they shall be paid out of the state treasury.

G. L. § 2655.
59 Vt. 332.
72 Vt. 55.
74 Vt. 315.

SEC. 2485. Costs not allowed, when. There shall not be taxed or paid by the respondent, town or state, any bill of costs in a prosecution for a misdemeanor in a justice's or municipal court, where there has been a prior conviction of the respondent for an offense grounded upon the same facts.

G. L. § 2656.

SEC. 2486. Orders for costs in cases tried in minor courts. Justices of the peace and municipal judges shall draw orders on the treasury of the town or village liable to pay the costs of a prosecution commenced and tried before them, in favor of the persons entitled to the same.

G. L. § 2657.
50 Vt. 231.

Prosecutions by Common Informers.

SEC. 2487. Name and residence entered; costs. When a person other than an informing officer, becomes a prosecutor, he shall enter his name and place of residence at the foot of the complaint, information or

G. L. § 2658.
11 Vt. 339.

indictment, and shall be liable to pay costs on such prosecution, and, on conviction, may receive costs.

SEC. 2488. Recognizance to respondent. The prosecutor shall, before a warrant issues for the arrest of the respondent, enter into a recognizance, with surety to the respondent, conditioned to prosecute to effect, or, on failure thereof, to pay the costs adjudged to the respondent.

SEC. 2489. Prosecutor to advance fees. The prosecutor shall advance the fees and incur the expenses of prosecution in the same manner as in civil causes, and no treasury shall be liable for the same.

SEC. 2490. Bail bond. When a person other than an informing officer becomes a prosecutor, and the person prosecuted is admitted to bail, the bail bond or recognizance shall be taken as well to the state, county, town or village to which the penalty or forfeiture would belong, as to the prosecutor; and, if such bond or recognizance becomes forfeited, the state, county, town or village and the prosecutor may have the benefit of it, and either may prosecute the same and recover as the court adjudges.

G. L. § 2659.

G. L. § 2660.

G. L. § 2661.

11 Vt. 339.

Taking Bail Out of Court.

SEC. 2491. Of persons committed for trial in a county or municipal court. If a person charged with a crime, not capital, is committed to jail for trial in a county or municipal court, or is so committed for failing to give bail, on appeal from a conviction of a crime before a justice's court, a superior judge or a judge or the clerk of the court having jurisdiction of such crime or of the county court in the county where such commitment is made, may take a recognizance, with sufficient sureties, of the person for his personal appearance to answer the charge before the court having jurisdiction of such crime, and thereupon order his release from commitment, and the keeper of the jail shall discharge such person upon receipt of such order.

G. L. § 2662.

53 Vt. 568.

57 Vt. 398.

58 Vt. 21.

SEC. 2492. Recognizance to be returned. The authority taking such recognizance shall return the same to the judge or clerk of the court before which the person is required to appear, before the time when the respondent is required to appear.

G. L. § 2663.

39 Vt. 353.

SEC. 2493. When cause is passed to supreme court. If a person is convicted of a bailable offense in a county or municipal court and the cause is passed to the supreme court, a judge of such county or municipal court may take a recognizance to the state, with sufficient surety, for the personal appearance of the person before the supreme court, to answer to the prosecution, and thereupon direct the discharge of the person from commitment.

G. L. § 2664.

78 Vt. 337.

89 Vt. 326.

Relief of Bail.

SEC. 2494. Warrant to apprehend and commit principal. If the bail for a person accused of a crime wishes to surrender the principal in discharge of his recognizance, he may apply in writing to the authority who took the recognizance, for a warrant to apprehend the principal and commit him to jail in the county where the offense is charged to have been committed. The authority shall thereupon issue such warrant, directed to any sheriff or constable in the state; and, on commitment of the principal to jail upon such warrant, the bail shall be discharged.

G. L. § 2665.

73 Vt. 149.

SEC. 2495. Commitment; expense paid by bail. An officer, on receipt of such warrant and tender of his legal fees, shall apprehend the principal and commit him to jail, according to the directions in his precept, and leave with the jailer a copy of the warrant, with his return

1933, No. 157, § 2317

G. L. § 2666.

73 Vt. 149.

thereon as in other cases. The expense of arrest and commitment shall be paid by the person applying for the warrant.

1933, No. 157, § 2318.
G. L. § 2667.

SEC. 2496. Fees. Fees for the arrest and commitment shall be the same as for the service of other process; and, if there is dispute about the amount, the same shall be audited by the authority who took the recognizance, and his decision shall be final.

G. L. § 2668.

SEC. 2497. Bail taken on continuance before minor courts. Similar proceedings may be had in case of bail on a continuance before a justice's or municipal court, and the form of the warrant may be changed to adapt it to such a case.

G. L. § 2669.

SEC. 2498. If authority taking bail is out of office. If the authority taking such recognizance is dead or out of office, the bail may return the recognizance so taken, or the original files of the justice, to the county clerk's office, and the clerk may issue the warrant; but in case the authority was a judge or clerk of a municipal court, the recognizance so taken shall be returned to his successor in office, who shall issue the warrant, but if such a successor has not been appointed, to the county clerk as herein provided.

To Whom Recognizance to be Taken.

G. L. § 2670.

SEC. 2499. To political division entitled to fine. A recognizance given by a person charged with a criminal offense, or by a witness in a criminal prosecution, conditioned for the appearance of the person or witness before the court, in causes where the offense is punishable by fine or imprisonment, and in appealed causes, shall be taken to the state, county, town or village to which the fine and costs are payable, and shall remain binding upon parties until discharged or until the prosecution is finally determined. The person or witness shall personally attend upon the court in which the prosecution is pending, from day to day and from term to term, and not depart without permission of the court, until the final determination of such prosecution.

G. L. § 2671.

SEC. 2500. Same; taken to the treasurer; effect. A bond or recognizance required to be taken to the state, county, town or village, if taken to the treasurer thereof, shall be valid, and the same proceedings may be had thereon as if taken to the state, county, town or village.

Chancering Bonds.

G. L. § 2672.
57 Vt. 53.
70 Vt. 96.

SEC. 2501. Motion; time limit; hearing. When a recognizance in a criminal prosecution pending in supreme, county or municipal court, is forfeited for a breach of the condition thereof, the sureties may, if in supreme or county court, at the term of the court at which such recognizance is forfeited, or, if in a municipal court, within thirty days of such forfeiture, file a motion to chancer; and the court shall forthwith, unless cause is shown for delay, hear the parties upon the motion to chancer and render judgment thereon without costs; and the sureties may pay to the clerk of such court or judge of such municipal court, as the case may be, the sum fixed by the judgment, and the same shall be accounted for as though an action had been brought on such recognizance and recovery of judgment had thereon.

G. L. § 2673.
70 Vt. 96.

SEC. 2502. Scire facias after forfeiture in supreme court. When a recognizance in a criminal prosecution is forfeited in the supreme court, scire facias thereon may be brought in the county court in the county in which such recognizance was taken.

G. L. § 2674.
70 Vt. 71.
70 Vt. 96.

SEC. 2503. Surrendering of principal considered in chancering. If a person bound to appear before a county or municipal court on

a complaint, information or indictment, does not appear, but forfeits his recognizance, such court shall order a warrant to be issued from time to time to take the body of the person for trial, and the surety of the person may take and deliver him to the officer having such warrant or to the court that issued it; and, on motion to chancer, the court shall consider the same in favor of the surety.

SEC. 2504. In action on recognizance, court may chancer. In actions brought to recover the penalty or forfeiture annexed to a recognizance taken in a criminal cause, the court may reduce the penalty of such bond and render judgment thereon as the circumstances of the case require.

G. L. § 2675.
54 Vt. 503.
55 Vt. 49.
70 Vt. 71.
70 Vt. 96.

Collection of Forfeited Bail.

SEC. 2505. Municipal courts. When a recognizance in a criminal prosecution is forfeited in a municipal court, scire facias thereon may be brought in the county court in the county in which such recognizance was taken.

CHAPTER 107.

(2506-2550)

EXTRADITION; TRANSPORTATION OF PRISONERS.

Uniform Criminal Extradition Act.

SEC. 2506. Definitions. The word "governor," as used in this chapter, shall include any person performing the functions of governor by authority of the law of this state. The words "executive authority" shall include the governor, and any person performing the functions of governor in a state other than this state. And the word "state" referring to a state other than this state shall mean any other state or territory organized or unorganized of the United States of America.

SEC. 2507. Duty of governor. Subject to the qualifications of this chapter, and the provisions of the constitution of the United States controlling, and acts of Congress in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

SEC. 2508. Application for extradition. A demand for the extradition of a person charged with crime in another state shall not be recognized by the governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate therein, together with a copy of any warrant which was issued thereon. The indictment, information or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

SEC. 2509. Investigation. When a demand shall be made upon the governor by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.