

CRIMINAL PROCEDURE

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CHAPTER 1.

PRELIMINARY PROVISIONS.

- § 10385. Comp. Laws, 1913.
State v. Finlayson, 41 N. D. 494, 170 N. W. 910.
§ 10389. Comp. Laws, 1913.
State v. Ramsey, 31 N. D. 626, 154 N. W. 731.
§ 10393. Comp. Laws, 1913.
State v. Tracy, 34 N. D. 498, 158 N. W. 1069.

CHAPTER 3.

PREVENTION OF PUBLIC OFFENSES.

ARTICLE 3.—SECURITY TO KEEP THE PEACE.

- §§ 10408-10420. Comp. Laws, 1913.
Bradley v. Malen, 37 N. D. 295, 164 N. W. 24.
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- § 10425. Comp. Laws, 1913.
Bradley v. Malen, 37 N. D. 295, 164 N. W. 24.

CHAPTER 4.

PROCEEDINGS FOR THE REMOVAL OF PUBLIC OFFICERS.

ARTICLE 2.—REMOVAL BY JUDICIAL PROCEEDINGS.

- §§ 10467-10481. Comp. Laws, 1913.
State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.
- § 10482. Comp. Laws, 1913.
Fact of charging illegal fees, to justify removal from office need not be proved beyond a reasonable doubt. State v. Borstad, 27 N. D. 533, 147 N. W. 380.
Charging per diem fee for going to and returning from meetings of board of county commissioners is unwarranted, and is a ground for removal from office. State v. Borstad, 27 N. D. 533, 147 N. W. 380.
Under proceedings for removal from office, defendant may refuse to testify as to matters which might tend to incriminate him. State v. Borstad, 27 N. D. 533, 147 N. W. 380.
See also State ex rel. Wehe v. Frazier, 47 N. D. 314, 182 N. W. 545.

CHAPTER 5.

BASTARDY PROCEEDINGS.

- §§ 10483-10500. These sections, although not specifically referred to in the body of the Uniform Illegitimacy Act (§§ 10500a1-10500a37, post) were intended to be repealed thereby as shown by the express wording of the title as set forth in the note preceding § 10500a1, post, and § 10500a37, post.
- § 10483. Comp. Laws, 1913.
Testimony of complainant need not be corroborated by other evidence. State v. Brunette, 28 N. D. 539, 150 N. W. 271.
- § 10486. Comp. Laws, 1913.
Bastardy proceedings are civil in their nature, though commenced by complaint, and issuing warrant of arrest, based upon complaint. State v. Hiertz, 41 N. D. 55, 170 N. W. 118.
See also State v. Fuchs, 48 N. D. 730, 186 N. W. 752.
- § 10489. Comp. Laws, 1913.
Rules governing civil cases apply to bastardy proceedings. State v. Brunette, 28 N. D. 539, 150 N. W. 271; State v. Southall, — N. D. —, 197 N. W. 866.

CHAPTER 5A.

UNIFORM ILLEGITIMACY ACT.

Explanatory note. This chapter, the title of which is "An act relating to children born out of wedlock and to make uniform the law with reference thereto, and for the repeal of sections 10483 to 10500 inclusive, Compiled Laws of 1913, and Chapter 70, Laws of 1917," is the Uniform Illegitimacy Act and the original act seems to have been adopted with slight changes, including the omission of § 6 of the original act and the renumbering of §§ 7-38 of the original act as §§ 6-37 of the North Dakota act. As a consequence of the renumbering, the references to other sections in §§ 29, 30, 37 are incorrect and should be as indicated in the brackets in such sections.

§ 10500a1. **Obligation of parents.** The parents of a child born out of wedlock and not legitimated (in this act referred to as "the child") owe the child necessary maintenance, education and support. The parents are liable for the child's funeral expenses. The father is also liable for the expenses of the mother's pregnancy and confinement. The obligation of the parents to sup-

port the child under the laws for the support of poor relatives applies to children born out of wedlock. [Laws 1923, ch. 165, § 1.]

Bastards, 7 C. J. pp. 955-956 §§ 31-33, p. 956 § 34 pp. 1001-1002 §§ 142-143; Paupers, 30 Cyc. 1122-1123.

Moral obligation to pay for past support or provide for future support of illegitimate child as consideration for executory promise. 17 A.L.R. 1310.

Obligation of parents to support illegitimate children. 3 R. C. L. 748 and Supps.

§ 10500a2. Recovery of mother from father. The mother may recover from the father a reasonable share of the necessary support of the child. In the absence of a previous demand in writing, served personally or by registered mail addressed to the father at his last known residence, not more than two years' support furnished prior to the bringing of the action may be recovered from the father. [Laws 1923, ch. 165, § 2.]

§ 10500a3. Recovery by others than mother. The obligation of the father as herein provided creates also a cause of action on behalf of the legal representatives of the mother, or on behalf of third persons furnishing support or defraying the reasonable expenses thereof, where paternity has been judicially established by proceedings brought by the mother by or on behalf of the child, or by the authorities charged with its support, or where paternity has been acknowledged by the father in writing or by the part performances of the obligations imposed upon him. [Laws 1923, ch. 165, § 3.]

Paupers, 30 Cyc. 1125.

§ 10500a4. Discharge of the father's obligation. The obligation of the father other than under the laws providing for the support of poor relatives is discharged by complying with a judicial decree for support or with the terms of a judicially approved settlement. The legal adoption of the child into another family discharges the obligation for the period subsequent to the adoption. [Laws 1923, ch. 165, § 4.]

Bastards, 7 C. J. p. 955 § 31, pp. 969-970 §§ 64-65; Adoption of Children, 1 C. J. p. 1397 § 124.

§ 10500a5. Liability of the father's estate. The obligation of the father where his paternity has been judicially established in his life time, or has been acknowledged by him in writing, signed in the presence of two witnesses and the execution of which has been acknowledged by him in addition before an officer authorized to take acknowledgments, is enforceable against his estate and in such an amount as the court may determine, having regard to the age of the child, the ability of the mother to support it, the amount of property left by the father, the number, age, and financial condition of the lawful issue, if any, and the rights of the widow, if any. The court may direct the discharge of the obligation by periodical payments or by the payment of a lump sum. [Laws 1923, ch. 165, § 5.]

Bastards, 7 C. J. p. 955 § 31, p. 972 § 70, p. 1001 § 143.

Liability of father's estate for support of illegitimate child. 3 R. C. L. 748 and Supps.

§ 10500a6. Complainants. The proceeding to compel support may be brought by the mother, or, if the child is or is likely to be a public charge, by the authorities charged with its support. After the death of the mother or in case of her disability, it may also be brought by the child, acting through its guardian or next friend. If the proceeding is brought by the public authorities, the mother if living shall be made a party defendant. [Laws 1923, ch. 165, § 6.]

Bastards, 7 C. J. pp. 972-973 §§ 73-74.

Who may question legitimacy of child born in wedlock. 1 A.L.R. 1632.

Marriage of woman to one other than defendant as affecting bastardy proceeding. 14 A.L.R. 974.

Right of prosecutrix to private counsel. 33 L.R.A.(N.S.) 463.

Necessity of guardian ad litem for infant in bastardy proceeding. 52 L.R.A. (N.S.) 799.

Who may institute bastardy proceedings. 3 R. C. L. 751 et seq. and Supps.

§ 10500a7. Time of bringing complaint. The proceeding may be instituted during the pregnancy of the mother or after the birth of the child, but, except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child, unless such person wishes to admit the truth of the accusation. [Laws 1923, ch. 165, § 7.]

Bastards, 7 C. J. pp. 976-977 §§ 79-80.

Time of bringing bastardy proceedings. 3 R. C. L. 756.

§ 10500a8. Complaint; where brought. The complaint may be made to any judge or magistrate having power to commit for trial. [Laws 1923, ch. 165, § 8.]

Bastards, 7 C. J. p. 974 §§ 75-76.

Where complaint may be brought. 3 R. C. L. 756.

§ 10500a9. Form of complaint. The complaint shall be in writing or oral, and in the presence of the complainant reduced to writing by the judge or the clerk of court. It shall be verified by oath or affirmation of complainant. [Laws 1923, ch. 165, § 9.]

Bastards, 7 C. J. pp. 977-979 §§ 83-84, p. 985 § 106.

Form of complaint. 3 R. C. L. 757.

§ 10500a10. Substance of complaint. The complainant shall charge the person named as defendant with being the father of the child and demand that he shall be brought before the judge to answer the charge. [Laws 1923, ch. 165, § 10.]

Bastards, 7 C. J. pp. 977-979 §§ 83-84, p. 985 § 106.

Substance of complaint. 3 R. C. L. 757.

§ 10500a11. Process. The judge shall issue his warrant for the apprehension of the defendant, directed to any officer in the state authorized to execute warrants, and such warrant may be executed in any part of the state. With the consent of a complainant, a summons may be issued in the first instance as in other civil cases, instead of a warrant, which summons shall be personally served. [Laws 1923, ch. 165, § 11.]

Bastards, 7 C. J. pp. 979-980 §§ 86-87.

Process in bastardy proceedings. 3 R. C. L. 757.

§ 10500a12. Preliminary hearing. Upon the return of the warrant or the summons showing service on the defendant the judge before whom the complaint was made, or any other judge sitting for him, shall proceed to examine the complainant and other witnesses and receive any other evidence that may be produced touching the charge, unless the defendant shall admit the truth of the charge in which case the court shall proceed to hear such evidence as may be necessary and to enter judgment against the defendant declaring paternity and for the support of the child. At any such preliminary hearing the court shall exclude the general public from the room wherein such trial or hearing is had, admitting only the persons interested directly in the case, including officers of the court and witnesses. The defendant shall have a right to be present at the examination and to controvert the charge if he so desires. The examination shall be reduced to writing. [Laws 1923, ch. 165, § 12.]

Bastards, 7 C. J. pp. 980-981 §§ 89-90.

Competency of woman to testify as to nonaccess of husband. L.R.A.1916B, 1053

Evidence of specific instances to prove character of mother for chastity. L.R.A.1916B, 969.

Admissibility of declarations of parents or putative parents as to paternity or maternity of child. 6 B. R. C. 853.

Exhibition of child for purpose of determining paternity. L.R.A.1917B, 1148.

Proof necessary to establish bastardy of child born to married woman. 36 L.R.A.(N.S.) 255.

Power of legislature to enact prima facie rule of evidence in bastardy proceedings. L.R.A.1915C, 733.

Presumption and burden of proof in bastardy proceedings. L.R.A.1918C, 891.

Evidence in bastardy proceedings. 3 R. C. L. 671 et seq. and Supps.

§ 10500a13. Result of hearing. If the examination fails to show probable cause, the defendant shall be discharged without prejudice to further proceedings. If the examination shows probable cause, the judge shall bind the defendant in bond or recognizance, with sufficient security to appear at the next term of the district court to be held in the county on neglect or refusal to furnish such security, he shall commit the defendant to jail to be held to answer the complaint. The warrant, the examination reduced to writing, and the security, shall be returned to the district court. [Laws 1923, ch. 165, § 13.]

Bastards, 7 C. J. pp. 981-985 §§ 91-105.

§ 10500a14. Continuance of trial. If the child is not born at the time set for trial, the case shall, unless the defendant consents to trial, be continued until the child is born, and the defendant shall remain bound or held until trial. [Laws 1923, ch. 165, § 14.]

Bastards, 7 C. J. p. 976 § 79.

§ 10500a15. Trial. The trial shall be by jury, if either party demands a jury, otherwise by the court, and shall be conducted as in other civil cases. [Laws 1923, ch. 165, § 15.]

Bastards, 7 C. J. p. 997 § 135.

Trial of bastardy proceedings. 3 R. C. L. 766 and Supps.

Constitutional right of jury trial. 16 R. C. L. 192 et seq. and Supps.

§ 10500a16. Absence of defendant. If the defendant fails to appear, the security for his appearance shall be forfeited and shall be applied on account of the payment of the judgment, but the trial shall proceed as if he were present; and the court shall upon the findings of the judge, or the verdict of the jury, make such orders as if the defendant were in court. [Laws 1923, ch. 165, § 16.]

Bastards, 7 C. J. p. 996 § 131, p. 985 §§ 103-104.

§ 10500a17. Effect of death or absence or insanity of mother. If after the complaint the mother dies or becomes insane or cannot be found within the jurisdiction, the proceeding does not abate, but the child shall be substituted as complainant. The testimony of the mother taken in writing at the preliminary hearing, or her deposition taken as in other civil cases, may in any such case be read in evidence, and in all cases shall be read in evidence, if demanded by the defendant. [Laws 1923, ch. 165, § 17.]

Bastards, 7 C. J. p. 972 § 70, p. 996 § 132.

Abatement of bastardy proceedings by death of complainant. 30 L.R.A.(N.S.) 1167.

Abatement of bastardy proceedings by death of mother. 3 R. C. L. 759 and Supps.

§ 10500a18. Death of defendant. In case of the death of the defendant, after the preliminary hearing, the action may be prosecuted against the personal representatives of the deceased with like effect as if he were living, subject as regards the measures of support to the provisions of section 6, except that no arrest of such personal representative shall take place or bond be required of him. [Laws 1923, ch. 165, § 18.]

Bastards, 7 C. J. p. 972 § 70.

Abatement of bastardy proceedings by death of defendant. 30 L.R.A.(N.S.) 1167.

Abatement of bastardy proceedings by death of defendant. 3 R. C. L. 760 and Supps.

§ 10500a19. Finding for defendant. If the verdict of the jury or the finding of the court at the trial be in favor of the defendant and there be a motion for a new trial, he shall be held until such motion be disposed of; and if a new trial is granted, the same course shall be pursued as in case of a continuance. [Laws 1923, ch. 165, § 19.]

Bastards, 7 C. J. pp. 999-1000 §§ 139-140.

§ 10500a20. Judgment. If the finding or verdict be against the defendant, the court shall give judgment against him declaring paternity and for the support of the child from the date of its birth. The judgment shall be for annual amounts, equal or varying, having regard to the obligation of the father under section 1, as the court directs, until the child reaches the age of sixteen years. The payments may be required to be made at such periods or intervals as the court directs. In addition to providing for support the judgment may also provide for the payment of the necessary expenses incurred by or for the mother in connection with the birth of the child. [Laws 1923, ch. 165, § 20.]

Bastards, 7 C. J. pp. 1000-1004 §§ 141-151.

Declaratory judgment as to legitimacy. 12 A.L.R. 86; 19 A.L.R. 1135.

§ 10500a21. Payment to trustee. The court may require the payments to be made to the board of administration, or the county child welfare board, if there be one, or to any other suitable and proper trustee or guardian. The trustee shall report to the court annually, or oftener as directed by the court, the amounts received and paid over. [Laws 1923, ch. 165, § 21.]

Bastards, 7 C. J. p. 1002 § 145.

§ 10500a22. Security; commitment; probation. The court may require the father to give security by bond with sureties, for the payment of the judgment. In default of such security, when required, the court may commit him to jail. After one year the person so committed may be discharged (in accordance with the law relating to the discharge of insolvent debtors), but his liability to pay the judgment shall not be thereby affected. Instead of committing the father to jail, or as a condition of his release from jail the court may commit him to the custody of a probation officer, upon such terms regarding payments and personal reports, as the court may direct. Upon violation of the terms imposed, the court may commit or recommit the father to jail. [Laws 1923, ch. 165, § 22.]

Bastards, 7 C. J. pp. 1003-1007 §§ 149-161.

Imprisonment under order in bastardy proceeding as imprisonment for debt. L.R.A.1915B, 651.

Effect of insertion of unauthorized provisions in bond. L.R.A.1917B, 990.

Imprisonment of defendant. 3 R. C. L. 767 and Supps.

§ 10500a23. Enforcement on default. Where security is given and default is made in any payment, the court shall cite the parties bound by the security, requiring them to show cause why judgment should not be given against them and execution issued thereon. If the amount due and unpaid be not paid before the return day of the citation, and no cause be shown to the contrary, judgment shall be rendered against those served the citation for the amount due and unpaid, together with costs, and execution shall issue therefor, saving all remedies upon the bond for future defaults. The judgment shall be enforceable as other judgments. [Laws 1923, ch. 165, § 23.]

Bastards, 7 C. J. pp. 1005-1007 §§ 155-159.

§ 10500a24. Contempt of process. The court also has power, on default as

aforesaid, to adjudge the father in contempt and to order him committed to jail in the same manner and with the same powers as in case of commitment for default in giving security. The commitment of the father shall not operate to stay execution upon the judgment on the bond. [Laws 1923, ch. 165, § 24.]

Bastards, 7 C. J. pp. 1003-1004 §§ 149-150, p. 1007 § 161.

§ 10500a25. Agreement or compromise. An agreement or compromise made by the mother or child, or some authorized person on their behalf with the father concerning the support of the child shall be binding upon the mother and the child only when adequate provision is fully secured by payment or otherwise and when approved by a court having jurisdiction to compel support of the child. The performance of the agreement or compromise when so approved, shall bar other remedies of the mother or child for the support of the child. [Laws 1923, ch. 165, § 25.]

Bastards, 7 C. J. pp. 969-971 §§ 64-69.

Right of parties to compromise or settle. L.R.A.1918D, 291.

§ 10500a26. Continued jurisdiction. The court has continuing jurisdiction over proceedings brought to compel support and to increase or decrease the amount thereof, until the judgment of the court has been completely satisfied, and also has continuing jurisdiction to determine custody in accordance with the interests of the child. [Laws 1923, ch. 165, § 26.]

Bastards, 7 C. J. p. 1003 § 148, pp. 953-955 §§ 28-33.

§ 10500a27. Failure to support. The failure of the father, without lawful excuse, to support the child where the same is not in his custody, and where paternity has been judicially established, or has been acknowledged by him in writing or by the part performance of his obligations, is a misdemeanor, punishable by a fine not exceeding one thousand dollars or by imprisonment in the county jail for not exceeding one year, or by both such fine and imprisonment. The failure of the parent to support the child where the same is in his or her custody shall be governed by the laws applicable to the failure to support a legitimate child. [Laws 1923, ch. 165, § 27.]

Bastards, 7 C. J. p. 955 § 31, p. 957 § 38; Parent and Child, 29 Cyc. 1676-1679.

§ 10500a28. Failure to carry out judgment. The failure, without lawful excuse, of a father to comply with and carry out a judgment for the support of the child whether the child be a resident in the jurisdiction where the judgment was rendered or not, is a misdemeanor punishable by fine not exceeding one thousand dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. [Laws 1923, ch. 165, § 28.]

Bastards, 7 C. J. pp. 1003-1004 §§ 149-151, p. 957 § 38.

§ 10500a29. Probation. Upon a prosecution under the provision of section 28 [27] or section 29 [28], on entry of a plea of guilty or after conviction, the court, instead of imposing sentence or of committing the father to jail, or as a condition of his release from jail, may commit him to the custody of a probation officer, upon such terms as to payment of support to or on behalf of the mother or child, and as to personal reports, as the court may direct. Upon violation of the terms imposed, the court may proceed to impose the sentence and commit or recommit to jail in accordance with the sentence. [Laws 1923, ch. 165, § 29.]

Bastards, 7 C. J. pp. 1003-1004 §§ 149-151, p. 957 § 38; Criminal Law, 16 C. J. p. 1289 § 3044, p. 1292 § 3050.

§ 10500a30. Concurrence of remedies. A criminal prosecution brought in accordance with the provisions of section 28 [27] or section 29 [28] shall not be a bar to, or be barred by, civil proceedings to compel support; but money paid toward the support of the child under the provisions of section 30 [29] shall be allowed for and credited in determining or enforcing any civil liability. [Laws 1923, ch. 165, § 30.]

Bastards, 7 C. J. p. 968 § 62, p. 972 § 72.

§ 10500a31. **Limitation of actions.** Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support. [Laws 1923, ch. 165, § 31.]

Bastards, 7 C. J. p. 977 § 80.

Limitation applicable to bastardy proceeding or action to compel support. 40 L.R.A.(N.S.) 444.

Application of general statutes of limitation in bastardy proceedings. 3 R. C. L. 756.

§ 10500a32. **Available district.** Jurisdiction over proceedings to compel support is vested in the district court of the county in which the alleged father is permanently or temporarily resident, or in which the mother of the child resides or is found. It is not a bar to the jurisdiction of the court of the county where the complaining mother or child resides in another state. Notice of any such proceeding shall be given by the clerk of the district court to the board of administration and such board thereupon shall advise or assist the complainant or the court in such proceeding. [Laws 1923 ch. 165, § 32.]

Bastards, 7 C. J. p. 968 § 60, pp. 974-976 §§ 75-78.

§ 10500a33. **Judgment of other state.** The judgment of the court of another state rendered in proceedings to compel support of a child born out of wedlock, and directing payment either of a fixed sum or of sums payable from time to time, may be sued upon in this state and be made a domestic judgment so far as not inconsistent with the laws of this state, and the same remedies may thereupon be had upon such judgment as if it had been recovered originally in this state. [Laws 1923, ch. 165, § 33.]

Judgments, 34 C. J. p. 1137 § 1612.

§ 10500a34. **Reference to relation of mother and child.** In all records, certificates, or other papers hereafter made or executed (other than birth records and certificates or records of judicial proceedings in which the question of birth out of wedlock is at issue) requiring a declaration by or notice to the mother of a child born out of wedlock or otherwise requiring a reference to the relation of a mother to such a child, it shall be sufficient for all purpose to refer to the mother as the parent having the sole custody of the child or to the child as being in the sole custody of the mother, and no explicit reference need be made to illegitimacy, and the term natural shall be deemed equivalent to the term illegitimate when referring to parentage or birth out of wedlock. [Laws 1923, ch. 165, § 34.]

§ 10500a35. **Construction of act.** This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [Laws 1923, ch. 165, § 35.]

Statutes, 36 Cyc. 1105, 1146.

§ 10500a36. **Brief title; name of act.** This act may be cited as the uniform illegitimacy act. [Laws 1923, ch. 165, § 36.]

§ 10500a37. **Operation and repealing clause.** This act applies to all cases of birth out of wedlock where birth occurs after this act takes effect, except that section 35 [34] applies to all cases occurring after this act takes effect. As to all such cases all acts or parts of acts inconsistent with this act are hereby repealed. [Laws 1923, ch. 165, § 37.]

CHAPTER 5B.

LEGITIMATIZING CHILDREN BORN OUT OF LAWFUL WEDLOCK.

Explanatory note. This chapter consisting of Laws 1917, ch. 70, was evidently in-

tended to be repealed by the Uniform Illegitimacy Act consisting of Laws 1923, ch. 165 (§§ 10500a1-10500a37, ante,) as appears from the express wording of the title set out in the note preceding § 10500a1, ante, and from § 10500a37, ante.

§ 10500b1. Legitimacy of children born out of wedlock. Every child is hereby declared to be the legitimate child of its natural parents and as such is entitled to support and education, to the same extent as if it had been born in lawful wedlock. It shall inherit from its natural parents and from their kindred heir lineal and collateral.

This section shall apply to cases where the natural father of any such child is married to one other than the mother of said child, as well as where he is single. Provided, however, this law shall not be so construed as to give to said child a right to dwelling or a residence with the family of its father, if such father be married. [Laws 1917, ch. 70, § 1.]

Bastards, 7 C. J. p. 947 § 18, p. 952 § 26, p. 960 § 43, pp. 953-957 §§ 28-38; Constitutional Law, 12 C. J. p. 963 § 508.

What amounts to recognition within statutes affecting the status or rights of illegitimates. L.R.A.1916E, 659.

Effect of statute legitimating issue of void or voidable marriage. L.R.A.1916C, 764.

Legitimation of offspring of adulterous relations. 1 L.R.A.(N.S.) 773.

Legitimation of bastard. 3 R. C. L. 739 and Supps.

§ 10500b2. Establishing fatherhood; time for. The mother of any child born out of lawful wedlock may within one year after the birth of such child bring an action in the district court to establish the defendant to be its father. In such cases the parentage may be proved like any other fact. Provided, that the mother of said child shall not be considered a competent witness in any case where the alleged natural father of said child shall be dead at the time of the trial. Provided, that a statement in writing may be made by the parents of said child, admitting the parentage thereof, and upon which a judgment may be entered. [Laws 1917, ch. 70, § 2.]

Instruction as to purpose of act held prejudicial error. State v. Sibla, 46 N. D. 337, 179 N. W. 656.

Bastards, 7 C. J. p. 952 § 25, p. 972 § 70, p. 977 § 80, p. 988 § 13.

§ 10500b3. Cumulative remedy. This action shall be deemed cumulative as to the remedies contained in sections 10483 to 10500 inclusive, relating to bastardy proceedings, but all children hereafter born in this state shall be deemed to be legitimate. [Laws 1917, ch. 70, § 3.]

Bastards, 7 C. J. p. 947 § 18, p. 968 § 62, p. 972 § 72; Constitutional Law, 12 C. J. p. 963 § 508.

CHAPTER 6.

PROCEEDINGS IN CRIMINAL ACTIONS PROSECUTED BY INFORMATION OR INDICTMENT, TO THE COMMITMENT INCLUSIVE.

ARTICLE 2. TIME OF COMMENCING CRIMINAL ACTIONS, §§ 10523.

3. THE COMPLAINT, INFORMATION OR INDICTMENT AND MAGISTRATES, §§ 10525-10529.

5. THE WARRANT OF ARREST, § 10535.

6. ARREST, BY WHOM AND HOW MADE, §§ 10567, 10570.

8. RAILWAY POLICE, §§ 10586-10591.

11. PRELIMINARY EXAMINATIONS, §§ 10598-10611.

ARTICLE 2.—TIME OF COMMENCING CRIMINAL ACTIONS.

§ 10523. Time of defendant's absence. If when the crime or public offense is committed, the defendant is out of the state, or if the defendant is in the

state when the crime is committed and subsequently leaves the state, the information may be filed, or the indictment found, within the time herein limited, after his coming within the state, and no time during which the defendant is not an inhabitant of, or usually resident within this state, is part of the limitation. [Laws 1925, ch. 124, § 1.]

Criminal Law, 16 C. J. pp. 228-229 §§ 350-351.

Effect of defendant's absence upon time of commencing criminal prosecution.
8 R. C. L. 134.

ARTICLE 3.—THE COMPLAINT, INFORMATION OR INDICTMENT AND MAGISTRATES.

§§ 10525-10527. Comp. Laws, 1913.

State v. Ramsey, 31 N. D. 626, 154 N. W. 731.

§ 10529. Comp. Laws, 1913.

State v. Ramsey, 31 N. D. 626, 154 N. W. 731; Bradley v. Malen, 37 N. D. 295, 164 N. W. 24.

ARTICLE 5.—THE WARRANT OF ARREST.

§ 10535. Comp. Laws, 1913.

Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 85.

ARTICLE 6.—ARREST, BY WHOM AND HOW MADE.

§ 10567. Comp. Laws, 1913.

State v. Pauley, — N. D. —, 192 N. W. 91; State v. Carter, — N. D. —, 195 N. W. 567.

§ 10570. Comp. Laws, 1913.

State v. Carter, — N. D. —, 195 N. W. 567.

ARTICLE 8.—RAILWAY POLICE.

§§ 10586, 10590. Comp. Laws, 1913.

McLane v. Scofield, — N. D. —, 191 N. W. 842.

§ 10591. Comp. Laws, 1913.

As to liability of railway company for assault committed by persons in its employ. Kinnonen v. Great Northern R. Co., 34 N. D. 556, 158 N. W. 1058.

See also Houston v. Minneapolis St. P. & S. Ste. M. R. Co. 25 N. D. 469, 46 L.R.A.(N.S.) 589, 141 N. W. 994.

ARTICLE 11.—PRELIMINARY EXAMINATIONS.

§ 10598. **Change of place of trial.** Whenever a person accused of a public offense is brought before a justice of the peace for examination, and at any time before such examination is commenced, he files with such justice his affidavit stating that by reason of the bias or prejudice of said justice he believes he cannot have a fair and impartial examination before him, such justice must transfer said action, and all the papers therein, including a certified copy of his docket entries, to another justice of the same county, if there is another justice in said county qualified to act; provided, that unless the parties agree upon the justice to whom said action shall be transferred, it shall be sent to the nearest justice of the county. The state's attorney, or his assistant, may, in the same manner and for the same reasons as the defendant, obtain a transfer of such action from the justice before whom the action was commenced, or from the justice to whom it has been transferred on the application of the defendant. When the action has been once transferred, by one party, it shall, on motion of the other party as herein provided, be transferred to the nearest qualified justice in the county, unless the parties agree upon a justice to whom said ac-

tion shall be transferred. The place of examination cannot be changed more than once by each party under this section. [Laws 1915, ch. 177, § 1.]

Criminal Law, 16 C. J. p. 180 § 243.

Change of venue for bias of judge. 27 R. C. L. 817.

§ 10600. Comp. Laws, 1913.

State v. McKone, 31 N. D. 547, 154 N. W. 256.

§ 10609. Comp. Laws, 1913.

Record or discharge assigning other reasons for discharge of defendant, than insufficiency of cause to believe defendant guilty, is incompetent and inadmissible as evidence. Rhoads v. First Nat. Bank, 37 N. D. 421, 163 N. W. 1046.

§ 10611. Comp. Laws, 1913.

To authorize committing magistrate to hold one accused of crime for trial, evidence reasonably showing that there is sufficient cause to believe accused guilty of an offense is sufficient. State ex rel. Germain v. Ross, 39 N. D. 630, 170 N. W. 121.

Failure of justice to endorse on complaint formal order binding defendant over, does not deprive trial court of jurisdiction. State v. Lennick, 47 N. D. 393, 182 N. W. 458.

CHAPTER 7.

PROCEEDINGS ON INFORMATION OR INDICTMENT.

ARTICLE 2. THE INFORMATION, §§ 10628-10633.

5. POWERS AND DUTIES OF THE GRAND JURY, § 10666.

7. FINDING AND PRESENTATION OF THE INDICTMENT, §§ 10678, 10679.

ARTICLE 2.—THE INFORMATION.

§ 10628. Comp. Laws, 1913.

Authorizes filing of information and trial of defendant at term at which grand jury is not summoned, though preliminary examination is held during such term, provided defendant has reasonable time and opportunity to prepare his defense. State v. Kilmer, 31 N. D. 442, 153 N. W. 1089.

Preliminary examination or waiver thereof is necessary prerequisite to prosecution by criminal information, unless offense charged is committed during continuance of term of court in the county or judicial subdivision in which the offense was committed or triable. State v. Finlayson, 41 N. D. 77, 169 N. W. 581.

See also State v. Riley, 26 N. D. 236, 144 N. W. 107; State v. Webb, 36 N. D. 235, 162 N. W. 358.

§§ 10629, 10630. Comp. Laws, 1913.

Shong v. Stinchfield, 47 N. D. 495, 183 N. W. 268.

§ 10631. Comp. Laws, 1913.

Section does not prevent witnesses whose names were not indorsed on information from being called in behalf of prosecution, where state's attorney did not know that they would be necessary. State v. Marty, — N. D. —, 203 N. W. 679.

See also State v. Kilmer, 31 N. D. 442, 153 N. W. 1089, Ann. Cas. 1917E, 116.

§ 10633. Comp. Laws, 1913.

State v. Wheeler, 38 N. D. 456, 165 N. W. 574; State v. Butler, 26 N. D. 231, 144 N. W. 238.

ARTICLE 5.—POWERS AND DUTIES OF THE GRAND JURY.

§ 10666. Comp. Laws, 1913.

State ex rel. Shafer v. District Ct. — N. D. —, 194 N. W. 745.

ARTICLE 7.—FINDING AND PRESENTATION OF THE INDICTMENT.

§§ 10678, 10679. Comp. Laws, 1913.

State ex rel. Miller v. District Ct. 19 N. D. 819, 124 N. W. 417.

CHAPTER 8.

RULES OF PLEADING AND FORM OF THE INFORMATION OR INDICTMENT.

- § 10684. Comp. Laws, 1913.
State v. Ramsey, 31 N. D. 626, 154 N. W. 731.
- § 10685. Comp. Laws, 1913.
Though a prosecution for adultery cannot be commenced except on complaint of husband or wife (§ 9579 C. L.), yet such complaint is not an ingredient of the offense, and failure to include such complaint in information, does not render it demurrable. State v. Beck, — N. D. —, 202 N. W. 857.
See also State v. Reilly, 25 N. D. 339, 141 N. W. 720; State v. Webb, 36 N. D. 235, 162 N. W. 358.
- § 10686. Comp. Laws, 1913.
State v. Ross, 46 N. D. 167, 179 N. W. 993; State v. Webb, 36 N. D. 235, 162 N. W. 358.
- § 10688. Comp. Laws, 1913.
State v. Bickford, 28 N. D. 36, 147 N. W. 407; State v. Davidson, 46 N. D. 564, 180 N. W. 31.
- § 10689. Comp. Laws, 1913.
State v. Webb, 36 N. D. 235, 162 N. W. 358; State v. Lesh, 27 N. D. 165, 145 N. W. 829.
- § 10690. Comp. Laws, 1913.
State v. Webb, 36 N. D. 235, 162 N. W. 358.
- § 10693. Comp. Laws, 1913.
Information containing statement of acts constituting offense in ordinary and concise language, without repetition, so as to enable a person of common understanding to know what was intended is sufficient. State v. Butler, 26 N. D. 231, 144 N. W. 238; State v. Guyer, 47 N. D. 479, 182 N. W. 693; State v. Beck, — N. D. —, 202 N. W. 857.
See also State v. Stevens, 33 N. D. 540, 157 N. W. 668; State v. Wheeler, 38 N. D. 456, 165 N. W. 574; State v. Lesh, 27 N. D. 165, 145 N. W. 829.
- § 10694. Comp. Laws, 1913.
State v. Webb, 36 N. D. 235, 162 N. W. 358; State v. Huff, 29 N. D. 412, 150 N. W. 929.
- § 10700. Comp. Laws, 1913.
State v. Falk, 34 N. D. 520, 159 N. W. 10.
- § 10701. Comp. Laws, 1913.
State v. Bickford, 28 N. D. 36, 147 N. W. 407.

CHAPTER 9.

PLEADINGS AND PROCEEDINGS AFTER INFORMATION OR INDICTMENT AND BEFORE THE COMMENCEMENT OF THE TRIAL.

- ARTICLE 1. ARRAIGNMENT OF THE DEFENDANT, §§ 10709–10727.
2. SETTING ASIDE THE INFORMATION OR INDICTMENT, §§ 10728–10734.
3. DEMURRER, §§ 10737–10745.
4. PLEA, §§ 10746–10754.
5. REMOVAL OF THE ACTION BEFORE TRIAL, §§ 10756–10768.
6. THE MODE OF TRIAL, §§ 10769–10772.
8. POSTPONEMENT OF THE TRIAL, § 10787.

ARTICLE 1.—ARRAIGNMENT OF THE DEFENDANT.

- § 10709. Comp. Laws, 1913.
Smith v. Barnes County, 32 N. D. 4, 152 N. W. 674.
- § 10726. Comp. Laws, 1913.
Failure to make seasonable request for time to plead operates as waiver of right to object. State v. Kelly, 25 N. D. 1, 140 N. W. 714.
- § 10727. Comp. Laws, 1913.
Failure to make seasonable request for time to plead operates as waiver of right to object. State v. Kelly, 25 N. D. 1, 140 N. W. 714.

ARTICLE 2.—SETTING ASIDE THE INFORMATION OR INDICTMENT.

- § 10728. Comp. Laws, 1913.
State v. Finlayson, 41 N. D. 77, 169 N. W. 581; State v. Stepp, 48 N. D. 566, 185 N. W. 812; State ex rel. Shafer v. District Ct. — N. D. —, 194 N. W. 745; State v. Hart, 30 N. D. 368, 152 N. W. 672; State v. Taylor, 31 N. D. 236, 153 N. W. 981.
- § 10729. Comp. Laws, 1913.
Failure to raise objection based upon variance at time of motion to quash information, held to operate as waiver of such objection. State v. Taylor, 31 N. D. 236, 153 N. W. 981.
See also State v. Lennick, 47 N. D. 393, 182 N. W. 458; State v. Stepp, 48 N. D. 566, 185 N. W. 812.
- § 10732. Comp. Laws, 1913.
Provides exclusive procedure governing motion to dismiss indictments. State ex rel. Shafer v. District Ct. — N. D. —, 194 N. W. 745.
- § 10733. Comp. Laws, 1913.
When indictments are erroneously dismissed upon motion, further proceedings must be as contemplated in the statute. State ex rel. Shafer v. District Ct. — N. D. —, 194 N. W. 745.
- § 10734. Comp. Laws, 1913.
State ex rel. Shafer v. District Ct. — N. D. —, 194 N. W. 745.

ARTICLE 3.—DEMURRER.

- § 10737. Comp. Laws, 1913.
State v. Davidson, 46 N. D. 564, 180 N. W. 31; State v. Stepp, 48 N. D. 566, 185 N. W. 812.
- § 10738. Comp. Laws, 1913.
State v. Stepp, 48 N. D. 566, 185 N. W. 812.
- § 10745. Comp. Laws, 1913.
State v. Davidson, 46 N. D. 564, 180 N. W. 31; State v. Hoff, 29 N. D. 412, 150 N. W. 929; State v. Webb, 36 N. D. 235, 162 N. W. 358.

ARTICLE 4.—PLEA.

- §§ 10746, 10747. Comp. Laws, 1913.
State v. Barnes, 29 N. D. 164, 150 N. W. 557.
- § 10749. Comp. Laws, 1913.
State v. Stepp, 48 N. D. 566, 185 N. W. 812.
- § 10754. Comp. Laws, 1913.
State v. Barnes, 29 N. D. 164, 150 N. W. 557.

ARTICLE 5.—REMOVAL OF THE ACTION BEFORE TRIAL.

- § 10756. Comp. Laws, 1913.
Signing and filing written order changing place of trial from county to district,

Chap. 9, § 10756. CRIMINAL PROCEDURE. *Pleadings before Trial.*

vests jurisdiction in that court though papers have not been transmitted and filed in latter court. *State v. Marty*, — N. D. —, 203 N. W. 679.

As to changing place of trial and judges in criminal action. *State v. Boyd*, 26 N. D. 224, 144 N. W. 232.

See also *State v. Gordon*, 32 N. D. 31, 155 N. W. 59; *Lowe v. District Ct.* 48 N. D. 1, 181 N. W. 92.

§ 10757. Comp. Laws, 1913.

Does not apply to petition filed under § 10766, and filing of petition, setting forth grounds for change of place of trial, before trial has begun, is presented in time. *State v. Boyd*, 26 N. D. 224, 144 N. W. 232.

§ 10758. Comp. Laws, 1913.

Lowe v. District Ct. 48 N. D. 1, 181 N. W. 92; *State v. Boyd*, 26 N. D. 224, 144 N. W. 232.

§§ 10759–10763. Comp. Laws, 1913.

State v. Boyd, 26 N. D. 224, 144 N. W. 232.

§ 10766. See § 7644, ante.

Signing and filing written order changing place of trial from county to district court, vests jurisdiction in that court, though papers have not been transmitted and filed in latter court. *State v. Marty*, — N. D. —, 203 N. W. 679.

Terms of this section are mandatory, and on presentation of petition alleging prejudice of people, and of judge, and district court has no further jurisdiction except to make order of transfer, and to secure attendance of another judge. *State v. Boyd*, 26 N. D. 224, 144 N. W. 232.

See also *Lowe v. District Ct.* 48 N. D. 1, 181 N. W. 92; *State v. Riley*, 26 N. D. 236, 144 N. W. 107.

§ 10767, 10768. Comp. Laws, 1913.

Lowe v. District Ct. 48 N. D. 1, 181 N. W. 92.

ARTICLE 6.—THE MODE OF TRIAL.

§§ 10769, 10770. Comp. Laws, 1913.

State v. Barnes, 29 N. D. 164, 150 N. W. 557.

§ 10772. Comp. Laws, 1913.

State v. Kelly, 25 N. D. 1, 140 N. W. 714.

ARTICLE 8.—POSTPONEMENT OF THE TRIAL.

§ 10787. Comp. Laws, 1913.

State v. Gordon, 32 N. D. 31, 155 N. W. 59; *State v. Uhler*, 32 N. D. 483, 156 N. W. 220.

CHAPTER 10.

PROCEEDINGS AFTER THE COMMENCEMENT OF THE TRIAL AND BEFORE JUDGMENT.

ARTICLE 1. CHALLENGING THE JURY, § 10809.

2. THE TRIAL, §§ 10822–10865.

4. THE VERDICT, §§ 10881–10890.

ARTICLE 1.—CHALLENGING THE JURY.

§ 10809. Comp. Laws, 1913.

Juror held not disqualified although he stated on voir dire examination, that the arrest and trial of one accused of crime might indicate to his mind "that there was something in it." *State v. Lesh*, 27 N. D. 165, 145 N. W. 829.

ARTICLE 2.—THE TRIAL.

§ 10822. Comp. Laws, 1913.

Requirement that all instructions be first reduced to writing, unless by consent of both parties, entered in minutes, the instructions are given orally, and taken down by court stenographer in shorthand is mandatory. *State v. Mitchell*, — N. D. —, 193 N. W. 310.

See also *State v. Barnes*, 29 N. D. 164, 150 N. W. 557; *State v. Scott*, 37 N. D. 105, 163 N. W. 810.

§§ 10824, 10825. Comp. Laws, 1913.

State v. Rielly, 25 N. D. 339, 141 N. W. 720.

§ 10837. Comp. Laws, 1913.

Instruction, without request, that defendant has right to remain off the witness stand, and that no adverse inference shall be drawn by jury from his failure to testify, not erroneous. *State v. Gates*, — N. D. —, 204 N. W. 351.

§ 10838. Comp. Laws, 1913.

State v. Moore, — N. D. —, 204 N. W. 341.

§ 10841. Comp. Laws, 1913.

In prosecution for larceny, testimony of recent possession of stolen property by accused, and attempting to discourage arrest of accomplice, and claiming to wife of accomplice that he has matters fixed up, held sufficient corroboration, to require submission of case to jury. *State v. McCarty*, 47 N. D. 523, 182 N. W. 754.

Corroboration need not extend to every material point, or be of itself sufficient to support verdict of guilty. If testimony of accomplice be corroborated as to some material fact, jury may infer that he speaks truth as to all. *State v. Smith*, — N. D. —, 199 N. W. 187.

§ 10842. Comp. Laws, 1913.

State v. Lessle-Young, 42 N. D. 96, 172 N. W. 814; *Spriggs v. Craig*, 36 N. D. 160, 161 N. W. 1007.

§ 10843. Comp. Laws, 1913.

State v. Reilly, 25 N. D. 339, 141 N. W. 720.

§ 10855. Comp. Laws, 1913.

State v. Tracy, 34 N. D. 498, 158 N. W. 1069.

§ 10857. Comp. Laws, 1913.

Within discretion of trial court to permit jury to separate while cause is being tried. *State v. Glass*, 29 N. D. 620, 151 N. W. 229.

§ 10860. Comp. Laws, 1913.

State v. Reilly, 25 N. D. 339, 141 N. W. 720.

§ 10865. Comp. Laws, 1913.

State v. Barnes, 29 N. D. 164, 150 N. W. 557.

ARTICLE 4.—THE VERDICT.

§ 10881. Comp. Laws, 1913.

State v. Barnes, 29 N. D. 164, 150 N. W. 557; *State v. Grassy*, — N. D. —, 197 N. W. 881; *State v. Bickford*, 28 N. D. 36, 147 N. W. 407.

§ 10889. Comp. Laws, 1913.

State v. Barnes, 29 N. D. 164, 150 N. W. 557.

§ 10890. Comp. Laws, 1913.

Assault and battery with dangerous weapon with intent to do bodily harm, necessarily included in offense of assault with deadly weapon with intent to kill. *State v. Grassy*, — N. D. —, 197 N. W. 881.

See also *State v. Barnes*, 29 N. D. 164, 150 N. W. 557; *State v. Klemmons*, 46 N. D. 177, 180 N. W. 25.

CHAPTER 11.

PROCEEDINGS AFTER VERDICT AND BEFORE JUDGMENT.

- ARTICLE 1. STATEMENT OF THE CASE AND EXCEPTIONS, §§ 10906-10915.
2. NEW TRIALS, §§ 10917, 10920.

ARTICLE 1.—STATEMENT OF THE CASE AND EXCEPTIONS.

§ 10906. **Matters deemed excepted to by the defendant.** The decision of the court in a criminal action or proceeding upon a matter of law is deemed excepted to by the defendant in the following cases:

1. In refusing to grant a motion for a change of the place of trial.
2. In refusing to postpone the trial on motion of the defendant.
3. In charging or instructing the jury upon the law, upon the trial of the issue, except as otherwise provided in section 9988 of this code (§ 10825 of the Compiled Laws of 1913). [R. C. 1905, § 10069; R. C. 1895, § 8260.]

§ 10913. **Time may be extended.** The times for preparing the statement of the case, or the amendments thereto, or for settling and certifying the same, may be extended before or other times fixed after they have elapsed, by the agreement of the parties or by the judge who presided at the trial, or in the cases provided for in section 10075 of this code (§ 10912 of the Compiled Laws of 1913), by the supreme court, or by a judge thereof. [R. C. 1905, § 10076; R. C. 1895, § 8267; C. Cr. P. 1877, § 417.]

§ 10914. **How statement of case prepared and settled.** The statement of the case shall be prepared and settled in the same manner as provided in section 7655 of Compiled Laws of North Dakota for 1913. [Laws 1925, ch. 126, § 1.]

- § 10915. Comp. Laws, 1913.
State v. Reilly, 25 N. D. 339, 141 N. W. 720.

ARTICLE 2.—NEW TRIALS.

- § 10917. Comp. Laws, 1913.
State v. Glass, 29 N. D. 620, 151 N. W. 229; State v. Cray, 31 N. D. 67, 153 N. W. 425.
- § 10920. Comp. Laws, 1913.
State v. Stepp, 45 N. D. 516, 178 N. W. 951.

CHAPTER 12.

JUDGMENT AND EXECUTION.

- ARTICLE 1. THE JUDGMENT, §§ 10925-10941.
2. INDETERMINATE SENTENCE AND PAROLE, §§ 10943-10949.
3. PROBATION OF CRIMINALS, §§ 10950-10956.
4. LENIENCY FOR FIRST OFFENDERS, § 10959.
5. AID TO POOR CONVICTS, § 10960.

ARTICLE 1.—THE JUDGMENT.

- § 10925. Comp. Laws, 1913.
State v. Riley, 26 N. D. 236, 144 N. W. 107.
- § 10934. Comp. Laws, 1913.
State v. Barnes, 29 N. D. 164, 150 N. W. 557.

§ 10941. *Comp. Laws, 1913.*

Imprisonment for failure to pay costs of criminal prosecution not a violation of either state or Federal constitution. *State v. Kilmer*, 31 N. D. 442, 153 N. W. 1089.

ARTICLE 2.—INDETERMINATE SENTENCE AND PAROLE.

§ 10943. **Term of imprisonment in the penitentiary.** In all cases where a person is convicted of a felony other than treason, murder in the first degree, kidnapping, or rape by force, the court imposing the sentence may, in its discretion, refrain from imposing sentence for a definite term and impose an indeterminate sentence. In all cases where an indeterminate sentence is imposed, the court imposing the sentence shall adjudge that the person so sentenced be imprisoned for not less than a stated minimum nor more than a stated maximum period of time; provided, that in all cases the minimum period shall not be less than the minimum term nor shall the maximum be more than the maximum term provided by law for the offense committed at the time of the commission of such offense. [Laws 1923, ch. 262, § 1.]

Criminal Law, 16 C. J. p. 1307 § 3083, p. 1357 § 3197, p. 1368 § 3223.

Indeterminate sentence as cruel and unusual punishment. L.R.A.1915C, 560.

Indeterminate sentence. 8 R. C. L. 261 and Supps.

§ 10944. **Official information of prisoner's character and habits.** It shall be the duty of the judge before whom any person is convicted and sentenced to the penitentiary, whether sentence is for a definite or indeterminate term, and it shall also be the duty of the state's attorney of the county in which such conviction is had, to file with the clerk of the district court an official statement of the facts and circumstances constituting and surrounding the crime whereof the prisoner was convicted, his age as nearly as can be ascertained, together with all other information accessible in regard to the career of the prisoner prior to the time of the committal of the crime of which he was convicted, relative to his habits, associates, disposition and reputation, and any other facts and circumstances which may be capable of throwing light upon the question as to when such prisoner may be capable of becoming a law-abiding citizen. In such statement the district court shall also set out the reasons for imposing the particular sentence imposed whether indeterminate or for a fixed term. In such statement the district court and state's attorney, or either of them, may also make any recommendations or offer any suggestions which are deemed pertinent relative to the prisoner and the cause under consideration. It shall be the duty of the official court reporter, at the dictation of the judge of said court, or the state's attorney of said county, to write the official statements of the judge and state's attorney above referred to at the time of the conviction of the prisoner, and it shall be the duty of the clerk of the court to cause copies of such official statements to be attached to the commitment and to deliver the same, so attached, to the sheriff of the county for transmission to the institution to which the prisoner is committed. [Laws 1923, ch. 262, § 2.]

Failure to file statement concerning character and habits of person sentenced to serve indeterminate term of from one to three years, does not render sentence indefinite as to require his discharge at expiration of minimum term. *Ex parte Riley*, — N. D. —, 203 N. W. 676.

§ 10948. **Board of pardons; powers and duties.** The board of experts is hereby abolished, and all powers conferred upon that board by existing provisions of law, are hereby vested in the board of pardons. All applications for the discharge or parole of the inmates of the penitentiary, who may have been sentenced either for a fixed term or under the indeterminate sentence law, shall be presented to and passed upon by the board of pardons and no person serving an indeterminate sentence shall be released from the peniten-

tiary merely because the minimum term of his sentence has expired but his term shall continue until the expiration of the maximum term, unless he is sooner ordered discharged or is paroled from the institution by the board of pardons. The board of pardons shall determine and fix the date when an inmate may be released or paroled or discharged after the expiration of the minimum term of the sentence. Such determination, however shall be made in each particular case and a complete record shall be kept of all the findings and orders of the board. It shall be the duty of the board of pardons to provide books of record, application blanks, and to formulate rules and regulations governing the conduct of the inmates, and the manner in which they may become eligible to become applicants for discharge or parole. Applications for parole may be considered at any regular meeting of the board of pardons or at any special meeting called by the governor. The board of pardons shall keep a complete record of all inmates discharged or paroled, and make a biennial report to the board of administration of all rules adopted, and of inmates paroled and discharged, and of all statistics pertaining thereto. [Laws 1923, ch. 262, § 3; Laws 1915, ch. 233, § 1.]

Explanatory note. An amendment by Laws 1919, ch. 244, was vetoed by the governor. See Laws 1919, page 494.

Right of prisoner on probation unlawfully detained, to invoke habeas corpus. State ex rel. Vadnais v. Stair, 48 N. D. 472, 185 N. W. 301.

Nonaction by board of pardons, concerning person sentenced to serve from one to three years, does not warrant issuances of writ of habeas corpus. Ex parte Riley, — N. D. —, 203 N. W. 676.

Pardons, 29 Cyc. 1563.

Validity of contract to procure pardon, parole or commutation of sentence. L.R.A.1916D, 580.

Constitutionality of restrictions upon governor's pardoning power. L.R.A.1915F, 519.

Effect of pardon granted after verdict and before sentence, or pending appeal. L.R.A.1917B, 570.

Constitutionality of statutes establishing parole system. L.R.A.1915F, 531.

Revocation for condition broken, of conditional pardon or parole, without notice or hearing. L.R.A.1915F, 541.

One on parole under conviction in the asylum state as subject to extradition. L.R.A.1918D, 680.

Statute conferring on court power as to suspension of sentence, as infringement of power of executives to grant reprieves and pardon. 26 A.L.R. 400.

Power of executive to pardon one committed for contempt. 23 A.L.R. 524; 26 A.L.R. 21.

Recovery of fine or penalty after pardon. 26 A.L.R. 1536.

Parole as suspending running of sentence. 28 A.L.R. 947.

Formal requisites of pardon. 34 A.L.R. 212.

Power of executive to pardon one committed for contempt. 38 A.L.R. 171.

Powers of board of pardons. 8 R. C. L. 262 and Supps.

§ 10949. Compensation. Each member of the board of experts, except the member of the state board of control, the warden of the penitentiary and prison physician, shall receive five dollars per day and necessary traveling expenses for travel to and from the state penitentiary, and expenses for books and records, to be paid out of the general funds of the state by the state treasurer on presentation of a voucher, as required by law, and approved by the board of control of penal and charitable institutions. [Laws 1915, ch. 233, § 2.]

Explanatory note. The board of experts referred to in the preceding section was abolished by § 10948, ante.

ARTICLE 3.—PROBATION OF CRIMINALS.

§ 10950. Comp. Laws, 1913.

State ex rel. Vadnais v. Stair, 48 N. D. 472, 185 N. W. 301.

§§ 10952, 10954. Comp. Laws, 1913.

State ex rel. Vadnais v. Stair, 48 N. D. 472, 185 N. W. 301.

§ 10955. **Field officer.** The state board of control of penal and charitable institutions may appoint and employ one officer to be known as field officer for the penitentiary and state training school who shall receive a salary of not to exceed twelve hundred dollars per annum and who shall be an employee of the state penitentiary and who shall give his entire time to penitentiary duties when not otherwise employed as field officer, and whose duty it shall be without additional salary or compensation other than that for necessary expenses, to carefully look after the welfare of all persons whose sentences have been suspended, and those who have been paroled from said institution after a period of imprisonment therein. [Laws 1915, ch. 192.]

What is "good behavior" within condition of suspended sentence. L.R.A.1918D, 697.

§ 10955a. **Emergency.** An emergency is hereby declared to exist wherein the present salary is entirely inadequate to meet the requirements of the office. Therefore this bill shall become a law immediately upon its passage and approval. [Laws 1915, ch. 192.]

§ 10956. Comp. Laws, 1913.

State ex rel. Vadnais v. Stair, 48 N. D. 472, 185 N. W. 301.

ARTICLE 4.—LENIENCY FOR FIRST OFFENDERS.

§ 10959. Comp. Laws, 1913.

Suspension of jail sentence may be revoked, and defendant imprisoned even after period of sentence has expired. Re Hart, 29 N. D. 38, L.R.A.1915C, 1169, 149 N. W. 568; Ex parte Harris, — N. D. —, 187 N. W. 140.

ARTICLE 5.—AID TO POOR CONVICTS.

§ 10960. Repealed by Laws 1925, ch. 82.

CHAPTER 13.

APPEALS.

ARTICLE 1. NOTICE OF APPEAL AND SERVICE, §§ 10992–10994.

4. JUDGMENT IN SUPREME COURT, § 11013.

ARTICLE 1.—NOTICE OF APPEAL AND SERVICE.

§ 10992. Comp. Laws, 1913.

Order by district court changing venue in a criminal action is nonappealable, it not being included in orders enumerated by this section. State v. Fortune, 29 N. D. 289, 150 N. W. 926.

§ 10993. Comp. Laws, 1913.

State held to have no right of appeal where, in prosecution for unlawful possession of intoxicating liquor, court advised a verdict, and verdict and judgment of acquittal were returned, defendant's bondsmen exonerated, and defendant discharged. State v. Kelsey, — N. D. —, 190 N. W. 817.

§ 10994. **Time for appeal limited.** An appeal from a judgment may be taken within six (6) months after its rendition and from an order within sixty (60) days after it is made. [Laws 1925, ch. 125, § 1.]

Appeal in a criminal case must be taken within one year after rendition of judgment, and an appeal not taken within such time, but within one year after entry of judgment is too late. Re Schantz, 26 N. D. 380, 144 N. W. 44.

See also State v. Stepp, 45 N. D. 516, 178 N. W. 951.

Criminal Law, 17 C. J. p. 95, § 3362.

Limitations as to time for appeal. 2 R. C. L. 14 et seq. and Supps.

ARTICLE 4.—JUDGMENT IN SUPREME COURT.

§ 11013. Comp. Laws, 1913.

Supreme court in determining appeals in criminal causes, must give judgment without regard to technical errors, defects or exceptions, which do not affect substantial rights of parties. *State v. Tracy*, 34 N. D. 498, 158 N. W. 1069.

See also *State v. Rosencranz*, 40 N. D. 93, 168 N. W. 650; *State v. Stepp*, 48 N. D. 566, 185 N. W. 812; *State v. Carter*, — N. D. —, 195 N. W. 567; *State v. McKone*, 31 N. D. 547, 154 N. W. 256; *State v. Glass*, 29 N. D. 620, 151 N. W. 229; *State v. Webb*, 36 N. D. 235, 162 N. W. 358; *State v. Marty*, — N. D. —, 203 N. W. 679; *State v. Gates*, — N. D. —, 204 N. W. 350.

CHAPTER 14.

WITNESSES AND EVIDENCE.

ARTICLE 2.—DEPOSITIONS IN CRIMINAL ACTIONS.

§ 11039. Comp. Laws, 1913.

Ross v. Cooper, 38 N. D. 173, 164 N. W. 679.

CHAPTER 15.

MISCELLANEOUS PROVISIONS.

- ARTICLE 2. COMPENSATION FOR ATTORNEYS AND WITNESSES, § 11072.
3. COMPROMISING MISDEMEANORS BY LEAVE OF THE COURT, § 11077.
6. ERRORS AND MISTAKES IN PLEADINGS OR OTHER PROCEEDINGS, § 11088.
9. REPRIEVES, COMMUTATIONS AND PARDONS, §§ 11108, 11108a1.
9a. ABOLISHING CAPITAL PUNISHMENT, §§ 11110a1-11110a3.
10. BAIL, §§ 11113-11125.
11. SEARCH WARRANTS, §§ 11139-11146.
12. PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE, §§ 11150-11162a.
13. DISMISSAL OF THE ACTION BEFORE OR AFTER INFORMATION OR INDICTMENT FOUND FOR WANT OF PROSECUTION, §§ 11166, 11167.

ARTICLE 2.—COMPENSATION FOR ATTORNEYS AND WITNESSES.

§ 11072. **Indigent defendant; attorney appointed.** In all criminal actions when it is satisfactorily shown to the court that the defendant has no means, and is unable to employ counsel, the court shall appoint and assign counsel for his defense and allow and direct to be paid by the county in which such trial is had, a reasonable and just compensation to the attorney so assigned for such services as he may render; provided, however, that such attorney shall not be paid a sum to exceed fifteen dollars per day in any one case. [Laws 1915, ch. 51, § 1.]

Criminal Law, 16 C. J. p. 822, § 2080.

Appointment of counsel by court. 8 R. C. L. 84 and Supps.

ARTICLE 3.—COMPROMISING MISDEMEANORS BY LEAVE OF THE COURT.

§ 11077. Comp. Laws, 1913.

Swan v. Great Northern R. Co. 40 N. D. 258. L.R.A.1918F, 1063, 168 N. W. 657.

ARTICLE 6.—ERRORS AND MISTAKES IN PLEADINGS OR OTHER PROCEEDINGS.

§ 11088. Comp. Laws, 1913.

Variance as to description of animals stolen held not material. *State v. Guyer*, 47 N. D. 479, 182 N. W. 693.

ARTICLE 9.—REPRIEVES, COMMUTATIONS AND PARDONS.

§ 11108. **Compensation of members of board.** The two qualified electors to be appointed on the board shall receive as compensation five dollars per diem while necessarily employed in attendance upon the sessions of the board and all traveling expenses necessarily incurred therein, to be paid as provided by law for the payment of trustees under section 11194. [Laws 1923, ch. 97.]

§ 11108a1. **Appropriation.** There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$1,000.00, or so much thereof as may be necessary to pay the per diem and necessary traveling expenses and miscellaneous items of expense incurred by such board, for the biennium beginning July 1st, 1925 and ending June 30th, 1927. [Laws 1925, ch. 50, § 1.]

ARTICLE 9a.—ABOLISHING CAPITAL PUNISHMENT.

§ 11110a1. **Punishment for murder in the first degree.** Every person who has been or may be hereafter convicted of murder in the first degree shall be punished by confinement at hard labor in the state penitentiary for life.

Provided, That if a person shall be convicted of murder in the first degree while under such life sentence he may be punished by death. [Laws 1915, ch. 63, § 1.]

Criminal Law, 16 C. J. p. 1371, § 3225; Convicts, 13 C. J. p. 919, § 14; Homicide, 30 C. J. p. 452, § 724.

Capital punishment as cruel and unusual punishment. L.R.A.1915C, 561.

Abolition of death penalty as affecting right to bail of one charged with murder in first degree. 8 A.L.R. 1352.

§ 11110a2. **Person convicted and under sentence of murder in the first degree when subject to pardon.** No person hereafter or heretofore convicted of murder in the first degree shall be eligible to pardon, commutation of sentence or parole until after he shall have been confined in the state penitentiary for at least fifty per cent of the time of his life expectancy, to be determined on the day and date of his age on the date of entry of final judgment of conviction, and such life expectancy shall be based on the life expectancy tables known as the Carlisle tables of mortality, or unless it shall be made to appear to the satisfaction of the pardon board that the person convicted is innocent of the charge for which he was convicted, or it shall be made to appear to the satisfaction of the pardon board that the person was convicted on a plea of guilty and did not directly commit the act constituting the offense, and that the indirect act committed by said person, which made him a principal in said crime by virtue of the provisions of section 9218, Compiled Laws for 1913, was done by him without intent and knowledge that the crime for which he was convicted would be committed. [Laws 1923, ch. 263; Laws 1921, ch. 95; Laws 1915, ch. 63, § 2.]

§ 11110a3. **Repeal.** Section 9472 of the Compiled Laws of 1913 for the state of North Dakota is hereby repealed. [Laws 1915, ch. 63, § 3.]

ARTICLE 10.—BAIL.

§ 11113. **When bail must be taken.** Bail by sufficient sureties shall be admitted upon all arrests in criminal actions when the offense is not murder in

the first degree, and in such actions it may be taken by any competent court, magistrate or legally authorized officer. [Laws 1925, ch. 123, § 1.]

Bail, 6 C. J. p. 953, § 168, p. 954, § 170.

Power to admit to bail in deportation case. 36 A.L.R. 887.

Danger to health from confinement as ground for removal, or release on bail. 31 L.R.A.(N.S.) 916.

Right of a Chinese person to bail in deportation proceedings. 31 L.R.A.(N.S.) 1088.

Right to bail pending attempt to avoid body execution. L.R.A.1915E, 340.

Right to bail. 3 R. C. L. 5 et seq. and Supps.

§ 11114. Bail upon capital charge. Bail by sufficient sureties may be admitted upon arrests in criminal actions when the offense is murder in the first degree unless the proof of guilt is evident or the presumption thereof great. In such actions it shall be taken only by the supreme court or a judge thereof, or by a district court or a judge thereof, and the taking thereof shall be discretionary, regard being had to the nature and circumstances of the offense and to the evidence and to the usages of law. The filing of an indictment or the filing of an information does not add to the strength of the proof or the presumption to be drawn therefrom. In case the action has been tried by a jury, and the jury have not agreed on a verdict, and had been discharged by reason of inability to agree, then the defendant shall be entitled to bail, unless it shall appear to the court or judge, by proof, that such disagreement was occasioned by the misconduct of the jury or the defendant or his counsel. [Laws 1925, ch. 123, § 2.]

Bail, 6 C. J. pp. 954-958, §§ 169-174, p. 962, § 182.

Abolition of death penalty as affecting right to bail on one charged with murder in first degree. 8 A.L.R. 1352.

Life sentence as affecting capital character of offense. 3 A.L.R. 970.

Bail in capital offenses. 3 R. C. L. 7 and Supps.

§ 11115. Bail on appeal after conviction. After a conviction of an offense not punishable with life imprisonment, a defendant who has appealed may be admitted to bail;

1. As a matter of right when the appeal is from a judgment imposing a fine only.

2. As a matter of discretion in all other cases. [Laws 1925, ch. 123, § 3.]

Explanatory note. An amendment in 1921 of §§ 11114, 11115 was vetoed by the governor. See Laws 1921, page 248.

Bail, 6 C. J. p. 965, § 185, p. 967, § 187.

Right to release on bail pending appeal under a general statute. 37 L.R.A.(N.S.) 693.

Right to release pending appeal from conviction, upon taking pauper's oath. L.R.A.1916F, 106.

Constitutional right to bail pending appeal from conviction. 19 A.L.R. 807.

Bail pending appeal. 3 R. C. L. 22 and Supps.

§ 11119. Comp. Laws, 1913.

State v. Williams, 48 N. D. 1259, 189 N. W. 625.

§ 11122. Comp. Laws, 1913.

Smith v. Barnes County, 32 N. D. 4, 152 N. W. 674; State v. Williams, 48 N. D. 1259, 189 N. W. 625.

§ 11122a. Bail of persons charged with larceny of horses or cattle. Bail for person or persons arrested upon the charge of larceny of horses or cattle, or who shall after preliminary examination be held to answer such charges shall in no case be less than two thousand dollars (\$2,000.00). [Laws 1917, ch. 69, § 1.]

§§ 11124, 11125. Comp. Laws, 1913.

State v. Williams, 48 N. D. 1259, 189 N. W. 625.

ARTICLE 11.—SEARCH WARRANTS.

§ 11139. Comp. Laws, 1913.

Lynch v. District Ct. 48 N. D. 431, 185 N. W. 303.

§§ 11141, 11146. Comp. Laws, 1913.

Lynch v. District Ct. 48 N. D. 431, 185 N. W. 303.

ARTICLE 12.—PROCEEDINGS AGAINST FUGITIVES FROM JUSTICE.

§ 11150. **Governor may offer reward for criminal.** The governor may offer a reward, not exceeding one thousand dollars, payable out of the state treasury for the apprehension:

1. Of any convict who has escaped from the penitentiary, or,
2. Of any person who has committed, or is charged with the commission of an offense punishable by imprisonment in the penitentiary for life.

3. Of any person who is charged with having absconded with or embezzled, or unlawfully taken and carried away any funds, assets or property of any state or national bank doing business in this state. [Laws 1917, ch. 200, § 1.]
Rewards, 34 Cyc. 1375.

Power of public authorities to offer reward. 23 R. C. L. 1123.

§ 11150a. **Appropriation.** There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of \$1,000.00, or so much thereof as may be necessary to pay rewards for apprehension of criminals, for the biennium beginning July 1st, 1925 and ending June 30th, 1927. [Laws 1925, ch. 54, § 1.]

§ 11162. **Governor may demand fugitives; appoint agents for return of; payment of agents.** The governor of this state may, in any case authorized by the Constitution and laws of the United States, demand of the executive authority of any other state or territory within the United States, any fugitive from justice or any person charged with the commission of treason, felony or other crimes in this state, and appoint agents to receive such persons for and on behalf of this state. The account of any such agent or agents employed for such purpose shall in cases of treason and felony be paid by the state upon the approval of the attorney general, and for other crimes be audited by the board of county commissioners of the county in which the crime was committed, and paid by such a county; provided, that only the sheriff of said county, or one of his deputies, or a constable or policeman thereof, shall be appointed such agent, and such agent shall not be paid more than his actual expenses, and a per diem of three dollars while in actual discharge of his duty. [Laws 1915, ch. 160, § 1.]

Extradition, 25 C. J. p. 255, §§ 4-5.

Demand for extradition by a governor. 11 R. C. L. 726 and Supps.

Who are fugitives. 51 L.R.A.(N.S.) 668.

Prisoner under parole as fugitive. L.R.A.1918D, 680.

Mission or motive of defendant in going to asylum state as affecting right to extradite him. 13 A.L.R. 415.

Extradition of one who violates parole. 8 A.L.R. 903.

One charged with desertion or failure to support wife or child as fugitive from justice, subject to extradition. 32 A.L.R. 1167.

§ 11162a. **Appropriation.** There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of \$5,000.00, or so much thereof as may be necessary to pay the expenses and per diem of agents in the arrest and return of fugitives from justice, for the biennium beginning July 1st, 1925 and ending June 30th, 1927, as provided for under section 11162 of the Compiled Laws of 1913 for North Dakota. [Laws 1925, ch. 25, § 1.]

ARTICLE 13.—DISMISSAL OF THE ACTION BEFORE OR AFTER INFORMATION OR INDICTMENT FOUND FOR WANT OF PROSECUTION.

§ 11166. Comp. Laws, 1913.

Failure to call jury for two terms following information held not to violate right to speedy trial, where accused did not resist postponement, or in any manner indicated a desire for a speedier trial, than one accorded him. *State v. Dinger*, — N. D. —, 199 N. W. 196.

§ 11167. Comp. Laws, 1913.

State v. Dinger, — N. D. —, 199 N. W. 196.

CHAPTER 17.

THE PENITENTIARY AND STATE TRAINING SCHOOL.

- ARTICLE 1. THE PENITENTIARY, §§ 11181, 11183a.
 2. STATE TRAINING SCHOOL, §§ 11190a1, 11190a2.
 6. DIMINUTION OF SENTENCE FOR GOOD CONDUCT, § 11215.
 7. DISCIPLINE, EMPLOYMENT AND DISCHARGE OF INMATES, § 11226.
 9. PAROLE OF INMATES, §§ 11229–11231.
 10. ESTABLISHMENT AND REGULATION OF TWINE AND CORDAGE PLANT, § 11246.
 12. OPERATION OF TWINE PLANT, §§ 11253–11255.
 14. COMPENSATION OF PRISONERS IN STATE PENITENTIARY, §§ 11261–11269.
 14a. COMPENSATION OF INMATES IN STATE TRAINING SCHOOL, §§ 11269a1–11269a3.
 14b. RELIEF FOR WRONGFUL IMPRISONMENT, §§ 11269b1–11269b6.
 15. EMPLOYMENT OF INMATES OF PENITENTIARY UPON PUBLIC BUILDINGS AND ROADS, §§ 11270–11273.
 16. THE SUPERINTENDENT AND OFFICERS OF THE TRAINING SCHOOL AND THEIR DUTIES, §§ 11275–11280.
 17. COMMITMENTS TO THE TRAINING SCHOOL, §§ 11281–11291.
 21. DECEASE OF INMATES, §§ 11302–11303.

ARTICLE 1.—THE PENITENTIARY.

§ 11181. **Penitentiary at Bismarck. Continuation and use.** The penitentiary located at Bismarck, in the county of Burleigh, shall continue to be the general penitentiary and prison of this state, for the punishment and reformation of offenders against the laws thereof, and in which shall be securely confined, employed and governed in the manner provided by law, all offenders who have been or may be convicted or sentenced according to law, to the punishment of imprisonment or confinement therein. [R. C. 1905, § 10322; 1883, Sp. ch. 30, §§ 1–10; R. C. 1895, § 8512.]

§ 11183a. **Appropriation.** There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$265,540.00, or so much thereof as may be necessary to pay the current and contingent expenses together with improvements and repairs of the State Penitentiary for the biennium beginning July 1st, 1925 and ending June 30th, 1927, to-wit: Salaries and wages:

1. Administration	\$18,000.00
2. Other employees	73,000.00
Operating expense:	
1. Fuel (including freight)	30,000.00
2. Light, power, water, gas	4,000.00
3. Telephone, telegraph, postage	2,500.00

4. Freight and express	1,500.00
5. Insurance, bonds and etc.	11,500.00
6. Printing	1,000.00
7. Travel and prison congress	1,200.00
8. Office supplies	2,000.00
9. Educational supplies	500.00
10. Power house supplies	6,000.00
11. Janitor's supplies	1,500.00
12. Inmates welfare	2,000.00
13. Food (including meats, etc.)	60,000.00
14. Clothing	12,000.00
15. Hospital and medical service	5,000.00
16. Warden's expense	1,000.00
17. Bertillon and escapes	5,000.00
18. Transportation & clothing (released convicts)	8,000.00
19. Maintenance of autos, trucks and tractors	4,000.00
20. Inmates wages	20,000.00
21. Mtc. farm and shops	7,000.00
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Total maintenance	\$276,700.00
Less estimated income	40,000.00
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Net maintenance	\$236,700.00
Improvements and repairs:	
1. General repairs	11,000.00
2. New fire proof roof on power house	4,000.00
3. Drilling well	1,000.00
4. Electric device for operating gates	2,500.00
5. Septic tank for penitentiary sewer	4,000.00
6. Rebuilding cell house tower	500.00
Equipment:	
1. Kitchen range	500.00
Miscellaneous items:	
1. Payments, interest and rentals of land	5,340.00
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Total	\$265,540.00

[Laws 1925, ch. 51, § 1.]

ARTICLE 2.—STATE TRAINING SCHOOL.

§ 11190a1. Appropriation. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated the sum of \$262,380.00, or so much thereof as may be necessary to pay the current and contingent expenses, improvements and repairs, new buildings, equipment and miscellaneous items of the state training school, Mandan, North Dakota, for the biennium beginning July 1st, 1925, and ending June 30th, 1927, to-wit:

Salaries and Wages:

1. Administration	\$15,160.00
2. Faculty	14,520.00
3. Other employees	56,000.00

Operating expenses:

1. Fuel (Including freight)	19,000.00
2. Light, power, water, gas	6,000.00
3. Telephone, Telegraph, Postage	1,500.00
4. Freight and express	1,000.00
5. Insurance, bonds, etc.	7,000.00
6. Printing	900.00

Chap. 17, § 11190a1. CRIMINAL PROCEDURE. Penitentiary, etc.

7. Travel and payrolls	\$5,400.00
8. Office supplies	250.00
9. Educational supplies	2,500.00
10. Power house supplies	3,000.00
11. Janitor's supplies	3,000.00
12. Students' (or inmates) welfare	3,500.00
13. Food (including meats, etc.)	40,000.00
14. Clothing	24,000.00
15. Hospital and medical service	8,000.00
16. Students' wage	2,000.00
17. Farm and garden mtce.	6,000.00
18. Auto truck mtce.	2,000.00
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Total maintenance	\$220,730.00
Less estimated income, I & I Inst. Coll. etc.	21,000.00
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Total net maintenance	\$199,730.00
Improvements and repairs:	
1. General repairs	4,000.00
2. Two wells	600.00
3. Remodel boiler house	1,500.00
4. Remodel manual training bldg.	2,000.00
5. Steam mains, sewer, campus lights	15,000.00
6. New silo and repairs	1,200.00
7. Gymnasium floor	1,200.00
8. Painting outside buildings	500.00
9. Sidewalks and grounds	500.00
New buildings:	
1. Dairy, ice, cold storage bldg.	10,000.00
2. Finish Dakota hall	5,000.00
3. Chicken house	500.00
Equipment:	
1. Farm machinery	600.00
2. Laundry equipment	6,500.00
3. Household equipment	2,000.00
4. Gymnasium equipment	1,000.00
5. School equipment	1,000.00
6. Fire equipment	1,500.00
7. Office equipment	600.00
8. Plumbing and carpenter shop equipment	1,500.00
9. Tailor and barber shop equipment	400.00
Miscellaneous items:	
1. Burial expense	300.00
2. Rewards	300.00
3. Interest	2,600.00
4. Land rental	2,350.00
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Total for the biennium	\$262,380.00

[Laws 1925, ch. 61, § 1.]

§ 11190a2. **Appropriation.** There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of \$28,000.00 for the purpose of paying an existing deficit in the general maintenance fund of the state training school at Mandan, North Dakota. [Laws 1925, ch. 71, § 1.]

§ 11211. Repealed by Laws 1899, ch. 119, § 2.

ARTICLE 6.—DIMINUTION OF SENTENCE FOR GOOD CONDUCT.

§ 11215. **Diminution regulated; powers of the board of control.** Every

person committed to the state penitentiary under sentence other than for life, who shall have no infraction of the rules and regulations of the prison or laws of the state recorded against him, shall be entitled to a deduction from the term of the sentence for each year, or pro rata for any part of a year, when the sentence is for more or less than one year as follows: From and including the first year up to the third year, a deduction of two months for each year; from and including the third year, up to the fifth year, a deduction of seventy-five days for each year; from and including the fifth year and up to the seventh year, a deduction of three months for each year; from and including the seventh year up to the eleventh year, a deduction of one hundred and five days for each year; from and including the eleventh year up to the period fixed for the expiration of the sentence, a deduction of four months for each year; and it shall be the duty of the warden to discharge any such person from the penitentiary when he shall have served the term of his sentence less the time he may be entitled to have deducted therefrom for good behavior as hereinbefore provided; and in the same manner as if no deduction had been made; provided, that if any person committed to the penitentiary shall be guilty of the violation of any of the rules and regulations thereof, or of the laws of the state, the board of control or warden may and are hereby empowered at their discretion to deprive such person of a portion or all, according to the flagrancy of his infraction of the rules and regulations, of the diminution of the term of his sentence.

Provided, that the provisions of this section shall also apply to persons sentenced to the penitentiary whose sentence has been suspended or who have been paroled. [Laws 1917, ch. 165, § 1.]

Prisons, 32 Cyc. 331-334.

Protection by ex post facto clause of right of prisoner to deductions for good conduct. 6 R. C. L. 302.

Good conduct statutes. 21 R. C. L. 1192 et seq. and Supps.

Time allowance to prisoner whose sentence has been commuted from life to a term of years. L.R.A.1915B, 95.

ARTICLE 7.—DISCIPLINE, EMPLOYMENT AND DISCHARGE OF INMATES.

§ 11226. **Discharge of inmates; clothing; employment.** Every person committed to the penitentiary shall, when discharged, be provided with a decent suit of clothes and a sum of money, not to exceed five dollars, and also transportation to the place where he received sentence. He may be allowed employment at, or in the penitentiary, under the rules and regulations established for the government of the inmates, for such period of time and at such rate of compensation as the warden shall deem proper and equitable; provided, that any person so discharged who has no infraction of the rules recorded against him, may be employed by any lessee of the workshop at the penitentiary for such time and for such wages, and in such manner as may be agreed upon and approved by the warden. [Laws 1917, ch. 167, § 1.]

Constitutionality of statute prescribing course of conduct for discharged convict. 38 A.L.R. 1036.

ARTICLE 9.—PAROLE OF INMATES.

§ 11229. Repealed by Laws 1915, ch. 211.

§ 11230. **What inmates may not be paroled.** The following described persons shall not under any circumstances be paroled from the penitentiary:

1. A person convicted and sentenced for the crime of murder in the first degree.
2. A person finally convicted, in any jurisdiction, of a felony other than that for which he is being punished.

3. A person who has not maintained a good record at the penitentiary for at least six months previous to his parol. [Laws 1917, ch. 171; Laws 1915, ch. 189, § 1.]

Explanatory note. Compare the above section with §1110a2, ante.

§ 11231. **Requirements precedent to parole.** No parole shall be granted to any person confined in the penitentiary unless:

1. The warden, in writing, recommends his parole to the board of experts.
2. The board of experts unanimously approve and endorse said recommendation.
3. The friends of such person have furnished satisfactory evidence to the board of experts, in writing, that employment has been secured for him with some responsible citizen and certified to be such by the judge of the county or district court of the county where such citizen resides.

4. The board of experts is convinced that he will conform to rules and regulations adopted by said board.

[Laws 1915, ch. 189, § 2.]

Explanatory note. Board of experts abolished and their powers vested in the board of pardons by § 10948, ante.

Revocation for condition broken of conditional pardon or parole, without notice or hearing. L.R.A.1915F, 541.

Constitutionality of statutes establishing parole system. L.R.A.1915F, 531.

Parole. 20 R. C. L. 577 et seq. and Supps.

ARTICLE 10.—ESTABLISHMENT AND REGULATION OF TWINE AND CORDAGE PLANT.

§ 11246. Repealed by Laws 1915, ch. 214, § 1.

ARTICLE 12.—OPERATION OF TWINE PLANT.

§§ 11253-11255. Repealed by Laws 1915, ch. 217.

ARTICLE 14.—COMPENSATION OF PRISONERS IN STATE PENITENTIARY.

§ 11261. **Employment of convicts confined in the state penitentiary.** The state board of control of the penal and charitable institutions, and the warden of the state penitentiary, shall employ all prisoners sentenced to the state penitentiary in all necessary work within and around the penitentiary in maintaining the institution, or in carrying on the work of the industries established at the penitentiary, or at other state institutions or on the public highways of the state. The state board of control shall establish rules and regulations relating to care, treatment and management of all prisoners wherever they may be employed. Prisoners shall be employed, in so far as practicable, on the work to which they are best adapted, and will make it possible for them to improve and acquire greater skill that they may earn a livelihood when paroled or discharged from the institution. [Laws 1915, ch. 191, § 1.]

Convicts, 13 C. J. p. 923, § 20.

Labor as cruel punishment. L.R.A.1915C, 562.

Right to compel prisoner to labor. 27 L.R.A. 593.

Constitutional objections to convict labor contracts. L.R.A.1916D, 660.

Employment of prisoners. 21 R. C. L. 1175.

§ 11262. **Employment of prisoners at other state institutions and by counties on the public roads.** The state board of control may employ such prisoners it may deem advisable, who are not needed in carrying on the work at the penitentiary, or the industries established at the penitentiary, upon work at other state institutions, or upon the construction and improvement of public highways, under the following conditions, as hereinafter set forth. Prisoners may be employed, under proper supervisors and guards, to improve the grounds and perform other labor at the various institutions, controlled and maintained by the state, and when so employed, such institution shall pay all

salaries and necessary expenses of maintenance, including cost of transportation to and from the penitentiary, and furnish the necessary tools and equipment required in carrying on said work. Prisoners may be employed upon the public highways of any county, when an agreement has been entered into by the state board of control, and the board of county commissioners of such county and upon the same conditions as the employment of prisoners at state institutions. Prisoners shall be at all times under the supervision of the warden, and the state board of control, and under the direct charge of proper officers and guards appointed by them. Prisoners so employed shall be placed upon their honor not to attempt to escape. They shall be clothed in plain, inconspicuous garb, and shall not be compelled to work more than ten hours in any one day. [Laws 1915, ch. 191, § 2.]

Convicts, 13 C. J. p. 923, § 20.

Ordinance against convict labor in streets. 39 L.R.A. 680.

Hiring out prisoners. 21 R. C. L. 1186 et seq. and Supps.

§ 11263. Tools and equipment. The warden, under the direction of the state board of control, shall procure the necessary machinery, tools, and equipment to properly carry on and conduct the work and industries of the penitentiary. [Laws 1915, ch. 191, § 3.]

§ 11264. Compensation. Prisoners engaged in carrying on the work of the penitentiary, and industries established thereat, or at other state institutions, or upon public highways, shall receive not less than ten cents nor more than twenty-five cents per day for work actually performed, the maximum compensation to be determined by the state board of control. The warden shall assign a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner shall be determined by the amount of work he performs on such task. All prisoners, faithfully performing the daily task assigned, shall receive the maximum compensation determined by the state board of control, and whenever it becomes necessary in carrying on the work at the penitentiary or otherwise above mentioned, for a prisoner to labor in excess of ten hours per day, he shall receive such additional compensation as allowed by the state board of control, not to exceed ten cents per hour. The compensation of all prisoners working at the penitentiary or the industries carried on thereat, shall be paid out of such funds of the penitentiary or the funds of the industries carried on at the penitentiary as the state board of control shall designate. [Laws 1915, ch. 191, § 4.]

§ 11265. Disposition of moneys earned. The warden of the state penitentiary shall keep an inmates account ledger in which shall be opened an account with each inmate, and the earnings of each inmate to whom money is paid, shall be distributed monthly as herein provided in the temporary aid account, the prisoners' general benefit fund, and the personal account of each prisoner and the dependent relative account of such prisoners as have relatives dependent upon them for support, and the warden shall furthermore keep an accurate account of all moneys deposited from any source whatsoever to the inmate's personal account, and also an account of the inmates general benefit fund showing in each case all receipts and expenditures. The earnings paid to all prisoners having dependent relatives shall be distributed as follows: There shall be mailed monthly to the dependent relatives of each prisoner, upon request, fifty per cent of his gross earnings and five per cent of each prisoners' gross earnings shall be deposited monthly to the credit of the prisoner's general benefit fund, and five per cent to be placed to the credit of his personal account. The remaining forty per cent of the prisoners gross earnings shall be deposited monthly to the credit of his temporary aid account, until he shall have accumulated the sum of fifty (\$50.00) dollars to his credit, or such portion thereof as he shall have earned at the expiration of his sentence, which sum shall be paid him in full upon his final discharge. All moneys earned by a

prisoner having a relative dependent upon him for support, after he has accumulated the sum of fifty (\$50.00) dollars to his credit in the temporary aid account shall be apportioned as follows: There shall be mailed monthly to said dependent relative of each prisoner upon request, seventy-five per cent of the gross earnings of said prisoner, and ten per cent deposited to the credit of the prisoner's general benefit fund and the remaining fifteen per cent placed to the credit of his personal account. The gross earnings paid to all prisoners not having relatives dependent upon them for support, shall be distributed as follows: Five per cent of the moneys earned by each prisoner shall be placed to the credit of the prisoners personal account, and five per cent of the money earned by each prisoner shall be placed to the credit of the prisoner's general benefit fund, and the remainder placed to the credit of the temporary aid account of each prisoner until he shall have accumulated the sum of fifty (\$50.00) dollars, to his credit or such portion thereof as he shall have earned at the expiration of his sentence, which sum shall be paid him in full upon his final discharge. The gross earnings of a prisoner having no relatives dependent upon him for support, after accumulating the aforesaid fifty (\$50.00) dollars, shall be distributed equally, seventy-five per cent to be placed to the credit of his personal account and the other twenty-five per cent to the credit of the prisoners' general benefit fund, which fund provides for the maintaining of the entertainments and amusements carried on for the benefit of all prisoners at the penitentiary. Any prisoner who requires medical, surgical or dental treatment, not provided by the state, may use the money to his credit in any fund to defray the expense of such treatment. This money to the credit of any prisoner who escapes or violates parole, shall be used to pay for the expense of apprehension and capture, and if said escaped prisoner or parole violator is not apprehended and captured within the time of one year from the date of his escape, the money to the credit of such escaped prisoner or parole violator shall be forfeited and turned into the credit of the prisoners' general benefit fund. Provided, however, that in case such escaped prisoner or parole violator is apprehended and captured at any time after the expiration of one year, the money to the credit of such escaped prisoner or parole violator which has been transferred to the prisoners' general benefit fund shall revert from the prisoners' general benefit fund, in so far as necessary in paying for the expense incurred in apprehending and capturing said escaped prisoner or parole violator. [Laws 1917, ch. 168, § 1; Laws 1915, ch. 191, § 5.]

§ 11265a. **Same; when uncalled for.** Any moneys earned by persons who have been confined in the state penitentiary under the provisions of section 11265 of the Compiled Laws of North Dakota for the year 1913, which moneys have been left uncalled for, and for the disposition of which the law makes no specific provision, shall be placed in the general benefit fund of the penitentiary. [Laws 1917, ch. 169, § 1.]

§ 11266. **Merit system.** The warden of the state penitentiary, with the approval of the state board of control, shall establish rules and regulations relating to the conduct of prisoners and shall prescribe penalties for the infraction and violation thereof. Such rules, regulations and penalties shall be printed in legible English, and posted in each cell of the penitentiary, and to such prisoners who cannot read English, they shall be translated and explained to said prisoners in their native language. [Laws 1915, ch. 191, § 2 [6].]

§ 11267. **Extra "good time."** Upon recommendation of the warden, the board of control may allow extra good time to prisoners in addition to the good time now granted by law. Provided, however, such extra good time shall not be computed upon the term of the sentence, but upon the time of their imprisonment. In computing such extra good time, it shall in no case more than equal the good time now provided by law, and in allowing such extra

good time, it is herein specifically provided that it must be earned by good conduct and diligent work. Provided, further, however, that for every thirty hours of work necessary for the management and conduct of the institution, performed by any prisoner on Sundays or holidays during the term of his imprisonment, such prisoner shall be allowed one day as extra "good time" in addition to all other "good time" allowed by law for good conduct and diligent work. [Laws 1917, ch. 170; Laws 1915, ch. 191, § 7.]

Prisons, 32 Cyc. 331.

Right of prisoner to credits. 21 R. C. L. 1192 and Supps.

§ 11268. **Fines for misconduct of prisoner.** The warden, with the approval of the state board of control, shall institute and maintain a uniform system of fines and penalties to be deducted from the compensation and good time credited to any prisoner for misconduct or refusal to perform the daily task assigned him. [Laws 1915, ch. 191, § 8.]

Prisons, 32 Cyc. 331.

Forfeiture of credits. 21 R. C. L. 1194.

§ 11269. Repealed by Laws 1915, ch. 191, § 9.

ARTICLE 14a.—COMPENSATION OF INMATES IN STATE TRAINING SCHOOL.

§ 11269a1. **Inducement offered by.** In order that some inducement may be offered to the boys and girls committed to the state reform school [now state training school] at Mandan to render faithful service, to inculcate the principles of thrift and good citizenship, to place additional restraints on their leaving the institution unlawfully, and to provide sufficient means to take care of their immediate wants, the inmates of the state reform school, while engaged in carrying on the work of the institution and the industries therein, shall, providing sufficient funds for that purpose are obtained from the sale of articles manufactured in the institution and of products raised on the farm thereof, receive not less than five cents nor more than fifteen cents per day for work actually performed, the amount to be determined by the state board of control. [Laws 1917, ch. 164, § 1.]

§ 11269a2. **Disposition of moneys earned.** The superintendent of the state reform school [now state training school] shall keep an inmates' account ledger, in which shall be opened an account with each inmate. The earnings of each inmate shall be distributed as follows:

Ten per cent of such earnings shall be credited to the personal account of the inmate, to be expended for the purpose desired by him, subject to the consent and approval of the superintendent. The remaining ninety per cent of such inmate's earnings shall be credited to his account and shall be paid to the inmate in full upon his discharge. [Laws 1917, ch. 164, § 2.]

§ 11269a3. **Forfeiture of earnings for escape or violation of parole.** In case any inmate shall escape or violate his parole, the money credited to such inmate's account which remains unexpended at the time of his escape or violation of parole may be used to pay the expense of apprehension, capture and return of such inmate; and in case there remains money to the credit of such inmate after deducting the said expenses, such money shall revert back to the fund from which it was originally drawn, immediately. [Laws 1917, ch. 164, § 3.]

ARTICLE 14b.—RELIEF FOR WRONGFUL IMPRISONMENT.

§ 11269b1. **Board; how constituted.** The governor and members of the state board of control are hereby constituted a board to be known as the board for the relief of persons who have served terms of imprisonment at the state penitentiary at Bismarck, or at the reform school [now training school] at

Mandan upon conviction for an offense or crime against the state of which they are innocent. The secretary of the state board of control shall be the secretary of the board hereby created. [Laws 1917, ch. 172, § 1.]

States, 36 Cyc. 900-904.

§ 11269b2. **Petition.** Any person who hereafter shall have served a term of imprisonment under conviction for a crime or offense against the state, of which crime or offense he claims to be innocent, or any person who shall have been pardoned by the board of pardons on the ground of innocence and whose term of imprisonment shall thereby have been decreased, may petition the board constituted in this act for the allowance from the state of compensation for such wrongful imprisonment. Upon presentation of such petition, the board shall fix the time and place for the hearing of the petition, and shall mail notice thereof to the claimant and to the attorney general of this state at least twenty days prior to the time fixed for such hearing. [Laws 1917, ch. 172, § 2.]

§ 11269b3. **Board to hear evidence.** Such board shall hold a hearing on such petition and shall cause evidence of the character hereinafter mentioned to be produced before it. After hearing the evidence, the board shall make a finding that it is clear beyond a reasonable doubt that the petitioner was innocent of the crime or offense for which he suffered imprisonment, or that it is not clear beyond a reasonable doubt that the petitioner was innocent of the crime or offense for which he was imprisoned. Upon the hearing before the board, the record of the trial in which the conviction [sic] may be presented to the board for the purpose of enabling the board to understand the situation, but the finding of the board shall be based only on such evidence or circumstances as have been discovered or have arisen since the trial and conviction of the petitioner of the crime or offense for which he claims to have suffered wrongful imprisonment. [Laws 1917, ch. 172, § 3.]

§ 11269b4. **Compensation.** If the board shall find that the petitioner was innocent of the crime or offense for which he suffered imprisonment, and that he did not by his act or failure to act contribute to bring about the conviction and imprisonment for which he seeks compensation, the board shall proceed to find the amount which will compensate the petitioner for his wrongful imprisonment. Such board may award a compensation to the prisoner so found innocent of not to exceed two thousand dollars in any case, and at a rate of compensation not greater than fifteen hundred dollars per year for the imprisonment unjustly suffered. If the board shall find that the amount they may be able to award will not be an adequate compensation to the petitioner, they shall report an amount to the legislature which they shall deem to be adequate and shall recommend the appropriation by the legislature to the petitioner of the amount in excess of the amount that they may have awarded. [Laws 1917, ch. 172, § 4.]

§ 11269b5. **Record of findings; appeal.** The board shall keep a full and complete record of its proceedings in each case and of all the evidence produced before them. The findings and awards of the board shall be subject to review on appeal by the district court for Burleigh county, but the appeal shall be subject to the same limitations as apply to findings and awards made by the board. [Laws 1917, ch. 172, § 5.]

§ 11269b6. **Award; certification; payment.** The award shall be certified by the board to the state auditor, and the warrant shall be paid out of the state treasury. [Laws 1917, ch. 172, § 6.]

ARTICLE 15.—EMPLOYMENT OF INMATES OF PENITENTIARY UPON PUBLIC BUILDINGS AND ROADS.

§ 11270. **Employment of inmates of the penitentiary.** The state board of

control is hereby authorized and empowered to employ the labor of the prisoners of the state penitentiary, or so much thereof as not otherwise employed, in the manufacture of brick, which may be sold at a price fixed by said state board of control, to make needed repairs, additions or improvements to the public buildings of the state, or in the event that there is a surplus of brick on hand over and above the brick needed for the aforesaid purpose, the state board of control may dispose of said brick to private parties. [Laws 1915, ch. 190, § 1.]

Convicts, 13 C. J. p. 923, § 20.

Requiring prisoners to perform labor. 21 R. C. L. 1175 et seq.

§ 11271. Comp. Laws, 1913.

Swallow v. First State Bank, 35 N. D. 323, 160 N. W. 137.

§ 11273. **Sale of products; board of control; use of receipts.** The receipts of such sales shall be deposited with the state treasurer, to the credit of the brickyard fund, and so much thereof as is necessary, may be used under proper voucher, approved by the state board of control, in payment of the expenses incurred in connection with the manufacture of brick and the necessary repairs, upkeep, purchase of machinery and other requirements of the brickyard. The receipts of the brickyard over and above the necessary expense in maintaining the same shall be deposited with the state treasurer, to the credit of the miscellaneous earnings of the penitentiary and shall be used under the discretion of the state board of control to augment any of the funds of the penitentiary. It shall be the duty of the warden to keep an accurate account of all labor and cost of materials, supplies, equipment and machinery used in the manufacture of brick, which shall be charged directly to the brickyard fund. [Laws 1915, ch. 190, § 2.]

Convicts, 13 C. J. p. 923, § 20.

ARTICLE 16.—THE SUPERINTENDENT AND OFFICERS OF THE TRAINING SCHOOL AND THEIR DUTIES.

Explanatory note. The name of the institution was changed from reform school to training school by Article 38 of the amendments of the constitution, amending § 215 of such constitution. See p. 104, ante.

§ 11275. **Officers of the state training school.** The officers of the state training school shall be: One superintendent, and such teachers and assistants as may be deemed necessary and recommended by the superintendent of the state training school and approved by the board of administration. [Laws 1925, ch. 196.]

§ 11276. **Appointment of superintendent; other officers.** The board of administration shall appoint a superintendent. The term of office of the superintendent, unless sooner removed by the board of administration for cause, shall be four (4) years, and until his successor is appointed and qualified. All other officers and employees shall be appointed by the superintendent subject to the approval of the board of administration, and shall hold office during the pleasure of the superintendent. [Laws 1925, ch. 196.]

Reformatories, 34 Cyc. 1004.

§ 11278. **Salary of superintendent; employees.** The superintendent and all other officers and employees shall receive a salary to be fixed by the board of administration, subject to the approval of the governor. [Laws 1925, ch. 196.]

§ 11279. **Duties of superintendent; records.** The superintendent shall, under the direction of the board of administration, have the charge, custody and control of such state training school, and the persons committed thereto or detained thereat, together with all the lands, buildings, furniture, and tools, implements, stock and provisions and every other species of property pertain-

ing thereto or within the precincts thereof, and shall superintend, and be responsible for the police of such state training school, and the government, discipline, instruction and control of those committed to said institution; he may make such rules and regulations for the admission of visitors, subject to the approval of the board of administration, and may designate days for the admission of visitors. Such superintendent shall cause to be kept a correct record of all transactions of his office and a correct account of all his doings; and shall cause to be kept a memorandum of every complaint made by those in the institution, of cruel and unjust treatment of any officer or other person, or the want of proper clothing or food, and also any infraction of the rules and regulations of the school by any of the persons committed to said school, naming him, and specifying the offense and the punishment, if any, inflicted therefor, and said memorandum shall be laid before the board of administration from time to time as requested. [Laws 1925, ch. 196.]

§ 11280. Duties of subordinates; teachers. All officers, teachers, and persons employed about the state training school shall perform such duties in the oversight and charge thereof, the use and care of the property belonging thereto and the custody, government, instruction, discipline and employment of the persons committed to said institution, as shall be required of them by the superintendent in conformity with law and the rules and regulations of the school. [Laws 1925, ch. 196.]

ARTICLE 17.—COMMITMENTS TO THE TRAINING SCHOOL.

Explanatory note. The name of the institution was changed from reform school to training school by Article 38 of the Amendments of the Constitution, amending § 215 of such constitution. See p. 104, ante.

§ 11281. Who may be sent to the state training school; procedure. Whenever any person under the age of twenty-one years shall, in any district court or county court having increased jurisdiction of this state, be found guilty of a crime or public offense other than murder, such court may, if in its judgment the accused is a proper subject therefor, instead of entering judgment against such person, direct by an order to be entered in the minutes of the court that such person be committed to the state training school until such person attains the age of twenty-one years, except that as to those persons who may be between the ages of twenty and twenty-one years, at the time of being found guilty and the passing of sentence, such persons may be committed to the said state training school for a period of not less than one year nor more than two years. [Laws 1925, ch. 196; Laws 1915, ch. 193.]

Infants, 31 C. J. pp. 1101-1112, §§ 226-247; Reformatories, 34 Cyc. 1005, 1007.
Commitment of juvenile offenders to houses of correction. 13 R. C. L. 958 and Supps.

Commitment of children to public institutions. 14 R. C. L. 273 and Supps.

§ 11288. Discharge for good conduct; refractory inmates. The board of administration of the state training school may at any time, upon satisfactory evidence of reformation and as a reward for good conduct and diligence in study, discharge any student therefrom, but if such student has no parent, guardian or other person to whom to return, such board shall first arrange for and procure some suitable person to receive, employ and care for the person so discharged, without charge to the state. If any person convicted of a felony and committed to such school shall be or become incorrigible and manifestly or persistently dangerous to the good order, government and welfare of such school or the students thereof, the board of administration must order such person returned and delivered to the parent or guardian or to the jailer of the county from which committed, as the case may be, and the proceedings against such person shall thereafter be resumed and continued as though no

order or warrant of commitment to the state training school had been made. [Laws 1925, ch. 196.]

Reformatories, 34 Cyc. 1009-1010.

§ 11289. **Aiding inmates to escape; penalty.** Every person who unlawfully aids or assists any person committed to the state training school in escaping or attempting to escape therefrom or from any officer thereof, or knowingly concealed such person after escaping, and every person who having been committed to said institution and who is thereafter paroled, and who during the time of his parole violates the conditions of such parole, is guilty of a misdemeanor. [Laws 1925, ch. 196.]

Escape, 21 C. J. p. 825; Reformatories, 34 Cyc. 1010.

§ 11291. **Parole permitted.** The board of administration of the state training school is hereby empowered to parole persons committed to the state training school and may establish rules and regulations under which such persons may go upon parole. [Laws 1925, ch. 196.]

Reformatories, 34 Cyc. 1010.

ARTICLE 21.—DECEASE OF INMATES.

§ 11302. **Expenses; duty of state auditor; payment.** The officer holding such inquest shall make an itemized statement and report in detail of the expenses of such inquest specifying to whom, and for what fees, services or supplies payable and the same verify by his oath, but in no case shall the expense of the burial of said body, exclusive of the fees allowed by law to officers, jurors, physicians and witnesses, exceed the sum of forty dollars; and the state auditor shall audit all claims for such inquest when presented as herein provided, and draw his separate warrants upon the state treasurer for the amount allowed to each person named in such statement and report, and said warrants shall be paid out of the state treasury. The fees of the officer holding said inquest and of the jurors, physicians and witnesses shall be the same as in other cases of inquests; provided, that no officer of the penitentiary or of the reform school [now training school] nor inmate thereof, shall be entitled to fees or other allowance on account of any services rendered at said inquest. There is hereby appropriated the sum of four hundred dollars out of any moneys in the state treasury not otherwise appropriated, for the payment of expenses necessarily incurred herein. [Laws 1915, ch. 12.]

Explanatory note. The reform school referred to in the preceding section and in § 11303, post, is now the training school. See § 215 subdiv. 6 of the constitution, p. 104, ante.

§ 11302a. **Appropriation for burial of inmates of penal institutions.** There is hereby appropriated out of any funds in the state treasury not otherwise appropriated the sum of \$300.00, for the biennium, or so much thereof as may be necessary to pay the costs of burial of inmates of the penitentiary and state training school as provided for under section 11302 of the Compiled Laws of North Dakota for the year 1913. [Laws 1923, ch. 30, § 1.]

§ 11303. **Effects of deceased; sale; money received.** It shall be the duty of the warden or superintendent within ten days after the decease of any person confined in the state penitentiary or reform school to report in writing to the state treasurer the money and effects in his hands belonging to the deceased, and with said report to transmit to the state treasurer any such money. The state treasurer shall receive such report and money and execute and give to the warden or superintendent a receipt therefor. The state treasurer may require the warden or superintendent to sell the effects of the deceased in his hands and direct the manner of said sale, or, in his discretion that the warden or superintendent deliver said effects to the legal representatives of the deceased, and it shall be the duty of such officer to carry out the requirements

and directions of the state treasurer in that regard. If said effects are sold, all moneys received therefor shall be delivered to the state treasurer as herein provided for the money of the deceased. The state treasurer shall place all money received on account of any such deceased person to the credit of the general benefit fund of the penitentiary or reform school, as the case may be. If said money is claimed within six years by the dependent relatives of the deceased the state treasurer must pay it to them after deducting the expenses of the inquest upon, and the burial of the body of the deceased. [Laws 1917, ch. 166, § 1.]

Explanatory note. See note following § 11302, ante.

CHAPTER 21.

HABEAS CORPUS.

§§ 11359, 11362. Comp. Laws, 1913.

Larson v. Dutton, 40 N. D. 230, 168 N. W. 625.

§ 11373. Comp. Laws, 1913.

Brissman v. Thistlethwaite, — N. D. —, 192 N. W. 85; State ex rel. Claver v. Broute, — N. D. —, 197 N. W. 871; State ex rel. Germain v. Ross, 39 N. D. 630, 170 N. W. 121.

CHAPTER 22.

GENERAL PROVISIONS.

§ 11400. Comp. Laws, 1913.

Reeves & Co. v. Russell, 28 N. D. 265, L.R.A.1915D, 1149, 148 N. W. 654.

CHAPTER 23.

JUVENILE COURTS.

§ 11402. Comp. Laws, 1913.

Re Kelber, — N. D. —, 200 N. W. 786.

§ 11403. Comp. Laws, 1913.

Before child can be committed to State Training School, by district court, the child must be found delinquent within the meaning of this section. Ex parte Solberg, — N. D. —, 203 N. W. 898.

§ 11406. Comp. Laws, 1913.

In proceeding under juvenile law, both parents of child alleged to be delinquent are entitled to notice of hearing and an opportunity to be heard before juvenile commissioner. Ex parte Solberg, — N. D. —, 203 N. W. 898.

§ 11407. Comp. Laws, 1913.

Both parents of a child alleged to be delinquent are entitled to notice of hearing before district judge on report and recommendations of juvenile commissioner. Ex parte Solberg, — N. D. —, 203 N. W. 898.

§ 11411. Comp. Laws, 1913.

Before child can be committed to State Training School, the district court must find that parents are unfit or improper guardians, and that it is for the best interest of the child. Ex parte Solberg, — N. D. —, 203 N. W. 898.

§ 11412a. **Trial of minors.** At the trial of a minor under the age of eighteen years charged with any crime, the judge or magistrate, prior to his being brought into the court room, shall clear the same of all persons, except officers of the court, attorneys, witnesses and relatives. [Laws 1923, ch. 168, § 1.]

§ 11422. Comp. Laws, 1913.

Ex parte Solberg, — N. D. —, 203 N. W. 898.

§ 11428a1. **Juvenile commissioners; jurisdiction, powers and duties; venue of complaints.** In order to more fully carry out the provisions of chapter 177 of the laws of the state of North Dakota for the year 1911, entitled "Juvenile Court," (same being sections 11402 to 11428 inclusive, Compiled Laws 1913) the district judges of the different districts shall appoint two suitable and discreet persons, one of each sex, of good moral character, as juvenile commissioners. Such male juvenile commissioner shall have exclusive jurisdiction over boys over the age of ten years, such woman juvenile commissioner shall have exclusive jurisdiction over girls over the age of ten years and both shall have concurrent jurisdiction over children ten years of age and under. Said commissioners shall have power to administer oaths; take acknowledgments of instruments, receive complaints and issue warrants for the arrest of persons thereon; to examine fully into the merits of each case; issue subpoenas; compel the attendance of witnesses before them and to report them to the district judge for contempt proceedings for nonattendance or refusal to be sworn or testify as provided by section 8200 Compiled Laws of 1913; to make such temporary order for the custody and control of the child or children thus brought before them as they may deem proper, except that no child under the age of six months shall be separated from its mother, and generally have the usual powers of a referee as provided by article VII. of chapter 11 of the Code of Civil Procedure for the trial of civil actions, in addition to the powers herein specially given. Provided, however, that when in the opinion of such commissioners or that of the court a final order for the custody or control of such child or children becomes necessary, either by sending the same to the reform school or other institution of this state; or to deprive the parents of their custody, and giving the same to some other person or persons, either for the purpose of temporary control or permanent adoption, it shall be the duty of such commissioners to make findings and report the same with their recommendations to the district judge, who shall fix a reasonable time and place for hearing, and make such final judgment or order in the case as he shall deem proper and right. The venue of all complaints shall be in the county where the child resides or where the cause for which it is sought to arrest such child exists or was committed. All complaints shall be made in the name of the state as plaintiff and the child as defendant. The action thus brought shall be deemed pending in the district court of such county from the time of filing the complaint in said court until finally disposed of by the district judge. Final hearings may be had either at the county seat of the county where the venue is laid, or in the county where the district judge has his permanent chambers as such judge shall direct. [Laws 1921 ch. 83, § 1; Laws 1915, ch. 179, § 1.]

Explanatory note. The reform school referred to in the preceding section is now the training school. See § 215 subdiv. 6. of the constitution, p. 104, ante.

Order depriving parents of custody of children, held erroneous. State v. Kelber, — N. D. —, 200 N. W. 786.

Both parents entitled to notice of hearing before juvenile commissioner as to delinquency of child, and of hearing before district judge, on report and recommendation of commissioner. State ex rel. Solberg v. Spicher, — N. D. —, 203 N. W. 898.

Discrimination in punishment for same offense between juveniles and mature offenders. 3 A.L.R. 1614; 8 A.L.R. 854.

Power of juvenile courts to punish for contempt. 8 A.L.R. 1548.

Jurisdiction of another court over child as affected by assumption of jurisdiction by juvenile court. 11 A.L.R. 147.

Power to impose license fee or penalty for benefit of Society for Reformation of Juvenile Delinquents. 13 A.L.R. 832.

Marriage as affecting jurisdiction of juvenile court over delinquent or dependent. 19 A.L.R. 616.

Recital of, or reference to, the offense in pronouncing sentence or judgment for contributing to juvenile delinquency. 14 A.L.R. 1001.

Vagrancy of minors. 14 A.L.R. 1507.

Validity of statutes establishing tribunal for juvenile offenders. 45 L.R.A. (N.S.) 908.

Juvenile courts. 14 R. C. L. 277 and Supps.

§ 11428a2. **Who may be heard; guardian ad litem; guardians.** At the hearings heretofore referred to, whether before the juvenile commissioners or court, any parent, guardian or other person showing that they have an interest in said proceedings, may appear and be heard upon the merits of the case. The court shall have, under this act, authority to appoint guardians ad litem who shall have full power to appear for such child or children, and consent to their adoption or take such other action as may be deemed best for the temporary as well as permanent interest of their said wards; and said courts shall also have all the power with reference to the appointment of guardians as is now provided by law and especially by section 7399, Compiled Laws of 1913. [Laws 1921, ch. 83, § 2; Laws 1915, ch. 179, § 2.]

Infants, 31 C. J. pp. 1105-1107, §§ 231-233.

§ 11428a3. **Record.** Said juvenile commissioners so appointed shall keep a record of all their proceedings in a suitable docket kept for that purpose. All necessary books, blanks, place for doing business, stationery and postage for the use of said commissioners in their official business for each county shall be furnished at the expense of the respective counties, by the board of county commissioners thereof. [Laws 1921, ch. 83, § 3; Laws 1915, ch. 179, § 3.]

§ 11428a4. **Compensation.** Said juvenile commissioners shall receive as full compensation for their services such an amount per diem as shall be approved by the district judge for all the time actually and necessarily employed in the duties of their office, not in any case exceeding the sum of six dollars per day. Such per diem and expenses to be apportioned by said judge between the several counties where the work originates or is done. Such compensation to be paid monthly by the county treasurers of such counties respectively on bills duly made out and verified as other bills or accounts against the county, and upon an order of the district judge. Provided that the per diem to be paid to either commissioner shall not exceed \$150.00 in any one month. [Laws 1921, ch. 83, § 4; Laws 1915, ch. 179, § 4.]

Infants, 31 C. J. p. 1000, § 23.

§ 11428a5. **Purpose and intent of act.** The purpose and intent of this act (§§ 11428a1-11428a5) is not to take from the court or judge any power he may now possess, but rather to supplement the efficiency of the work of the district court or judge by casting upon the juvenile commissioners the labor of caring for details and making it only necessary for the judge to act when he can or when it becomes necessary to exercise a judicial function by trying a case or making a final order, and to that end said commissioners shall be subject to appointment and removal by the district judge as he may deem it necessary. [Laws 1921, ch. 83, § 5; Laws 1915, ch. 179, § 5.]

Infants, 31 C. J. p. 1000, § 23.

§ 11428a6. **Emergency.** Owing to the fact that the crowded condition of the work of the district judges renders it impossible for them to give proper attention to the details of the juvenile courts, an emergency exists and therefore [e] this act shall take effect and be in force from and after its passage and approval. [Laws 1921, ch. 83, § 6.]