CHAPTER 359.

JUDGMENTS IN CRIMINAL CASES AND EXECUTION.

359.01 Recognizance to keep peace. Every court before whom any person shall be convicted upon indictment, information or complaint for any offense and shall be sentenced, as punishment therefor, to pay a fine and costs may, in addition to such punishment, require such person to recognize with sufficient sureties in a reasonable sum to keep the peace or to be of good behavior, or both, for any time not exceeding two years and to stand committed until he shall so recognize; and in case of a breach of the condition of any such recognizance the same proceedings shall be had that are by law prescribed in relation to recognizances to keep the peace.

359.02 Certificate of conviction. (1) Whenever any person shall be convicted in any circuit court of any criminal offense and shall, upon such conviction, be sentenced to confinement, either in the county jail, workhouse or in the state prison or to pay a fine and costs, the clerk of the court in which such conviction shall have been had and such sentence pronounced shall make out, under his hand and the seal of the court, a certificate of such conviction and sentence, showing the title of the court, the name of the convict, a brief statement of the offense with which he is charged, the date of the conviction, the date of the sentence and a copy of the sentence in full, and shall deliver such certificate to the sheriff of the county to be by him retained in lieu of a commitment, in cases where the convict may be sentenced to confinement in the county jail or workhouse, or to be transmitted with the convict, in case of sentence to confinement in the state prison. And such certificate so remaining in the hands of the sheriff or of the keeper of the state prison shall be a sufficient authority for such sheriff or keeper to execute such sentence, and he shall execute the same accordingly.

(2) When the sentence is to imprisonment in a workhouse the sheriff or other officer who delivers the prisoner to the superintendent shall also deliver to him a copy of the certificate of conviction, which copy so remaining in the hands of the superintendent of any workhouse shall be sufficient authority for such superintendent to execute such sentence, and he shall execute the same accordingly.

359.03 Form. The certificate mentioned in section 359.02 may be substantially in the following form:

.... County, Circuit Court.

The State of Wisconsin
vs.
....
} Certificate of conviction and sentence.

I, A. B., clerk of the said circuit court, do hereby certify that at a general term of said circuit court, begun and held at the courthouse in the .... of ...., on the .... day of ...., A. D. 19.., the said .... was in due form of law convicted of the crime of (here give a brief description of the offense), and upon said conviction the said court did, on the .... day of ...., A. D. 19.., pass sentence upon the said ...., as follows: (here give the sentence in full, as pronounced by the court).

Given under my hand and the seal of said circuit court, at the courthouse in the .... of ...., in said county, this .... day of ...., A. D. 19...

A. B., Clerk.

359.04 Offense, how stated. It shall be sufficient in describing the offense in such certificate to set out the same in the language of the statute prescribing a penalty therefor.

359.05 Sentence, form, exceptions. In every case in which the punishment of imprisonment in the state prison is awarded against any convict, except persons convicted of

treason, murder in the first degree as defined by law, kidnaping, or of any crime for which a minimum penalty is fixed by statute at 20 years or more, the court may fix a term less than the maximum prescribed by law for the offense, and the form of the sentence shall be substantially as follows: "You are hereby sentenced to the state prison at Waupun at hard labor for a general indeterminate term of not less than .... (the minimum as fixed by law for the offense) years and not more than .... (the maximum as fixed by the court) years" and shall have the force and effect of a sentence of the maximum term, subject to the power of actual release from confinement by the state department of public welfare or actual discharge of the governor upon recommendation of the state department of public welfare or by pardon as provided by law. If, through mistake or otherwise, any person shall be sentenced for a definite period of time for any offense for which he may be sentenced under the provisions of this section, such sentence shall not be void, but the person shall be deemed to be sentenced nevertheless as defined and required by the terms of this section. Persons convicted of treason, murder in the first degree as defined by law, kidnaping, or in the case of any other crime for which a minimum penalty is fixed by statute at 20 years or more, shall be sentenced for a certain term of time. Nothing herein shall be construed to extend or modify the term of imprisonment of any person sentenced prior to the enactment of this statute. [*1931 c. 181; 1943 c. 313*]

Cross Reference: See 54.03 for sentence to reformatories.

Note: Under 359.05, Stats. 1929, sentence for rape to indeterminate term is erroneous and maximum thereof must be considered as real term of prisoner; such prisoner is entitled to parole consideration when he has served one-half of maximum sentence. 19 Atty. Gen. 604.

Governor may commute definite sentence to indeterminate sentence and when he does so parole provisions for indeterminate sentence apply. 20 Atty. Gen. 1050.

Sentence of court of competent jurisdiction, even though erroneous, controls until modified by appropriate proceedings. Board of control, in granting parole, may take into consideration fact that prisoner was erroneously sentenced to indeterminate term. Person properly sentenced to determinate term under 340.56 and 359.05, Stats. 1933, is not eligible for parole until he has served one-half term for which he was sentenced. 22 Atty. Gen. 737.

Indeterminate sentence to state prison under any statute which fixes no minimum term of imprisonment, must be for minimum of one year in view of 359.05 and 359.07. Attempt by court to fix higher minimum sentence is ineffective. 21 Atty. Gen. 322 overruled. 32 Atty. Gen. 412.

359.051 Indeterminate sentence, discharge. (1) Except as provided in subsections (2) and (3), the sentence of any person except those convicted of murder in the first or second degree shall be for a term not less than one year and shall be for a general or indeterminate term not less than the minimum nor more than the maximum term of imprisonment prescribed by law for the offense. In imposing the term, the court may fix a term less than the maximum prescribed by law for the offense. Such general sentence shall be substantially as follows:

"You are sentenced to the Wisconsin state reformatory or to the Wisconsin home for women for a general or indeterminate term of not less than .... (the minimum for the offense) years, and not more than .... (the maximum fixed by the court) years."

Such sentence shall have the force and effect of a sentence for the maximum term subject to the power of actual release from confinement by parole by the state department of public welfare or by pardon as provided by law. If, through mistake or otherwise, any person shall be sentenced for a definite period of time for any offense for which he may be sentenced under the provisions of this section, such sentence shall not be void, but the prisoner shall be deemed to be sentenced nevertheless as provided and required by the terms of this section. Nothing herein shall be construed to extend or to modify the term of imprisonment of any person sentenced prior to the enactment of this statute.

(2) Upon the recommendation of the superintendent and the state department of public welfare, the governor may, without the procedure required by chapter 57 of these statutes, discharge absolutely, or upon such conditions and restrictions, and under such limitations as he may think proper, any inmate of the reformatory after he shall have served the minimum term of punishment prescribed by law for the offense for which he was sentenced. Such discharge shall have the force and effect of an absolute or conditional pardon, respectively.

(3) In lieu of the penalty provided by statute, or city or village ordinance, under which said offender is tried, the court may commit any female person except those convicted of murder in the first or second degree to the home for women for a general or indeterminate term, which term shall not exceed 5 years in any case, subject to the power of release from actual confinement, by parole or absolute discharge by the state department of public welfare or by pardon, as provided by law.

(4) All courts of record having criminal jurisdiction in this state, regardless of their jurisdictions as otherwise defined by statute, shall have the power to commit as provided in subsection (3). [*1931 c. 181; 1943 c. 93; 1945 c. 343; 1947 c. 519*]

Comment of Interim Committee, 1947: Old 54.03 and 54.04 relate to court practice and belong with the other like provisions in Ch. 359 relating to sentences, commitment certificates, etc. * * * 54.03 relates to indeterminate sentences to the reformatory and

home for women. Such sentences to state prison are in 359.05. 54.04 deals with trial and commitment records and execution of sentences to the reformatory and home for women. Related provisions as to county jail, workhouse and state prison sentences are in 359.02. It seems that all provisions relating to indeterminate sentences and commitment certificates and records should be harmonized and consolidated or at least located together. (Bill 35-A)

Note: A sentence for manslaughter of from 6 to 7 years was a sufficient compliance with this statute which prescribes the form of indeterminate sentence. Oehler v. State, 202 W 530, 232 NW 866.

The home for women is, by express declaration of 54.015 (1), Stats. 1945, a prison, and it is beyond the power of a justice court, or a court sitting as such, to sentence an offender thereto, since the extreme sentence of imprisonment which a justice court may impose under 360.01 (5) is 6 months in the county jail. Sentence to the home for women can be imposed only by a court that has power to sentence to a prison as distinguished from the county jail, and power to sentence for a felony or for a misdemeanor for a year in the county jail under the repeater statute, 359.14. The provisions in 54.03 (3) and in 54.02 (3), Stats. 1945, that offenders may or shall be sentenced to the home for women, do not apply to misdemeanors of which a justice of the peace, or a court sitting as such, has jurisdiction under 360.01 (5). State ex rel. Maloney v. Proctor, 249 W 377, 25 NW (2d) 698.

The superior court of Dane county, when sitting as a justice of the peace pursuant to sec. 12, ch. 217, laws of 1929, is not a "court of record" within the meaning of 54.03 (4), Stats. 1945, providing that all courts of record having criminal jurisdiction shall have power to commit female offenders to the home for women as provided by (3). State ex rel. Maloney v. Proctor, 249 W 377, 25 NW (2d) 698.

54.03 (3), Stats. 1945, governs the place rather than the extent of imprisonment, and is applicable only to female persons under 18 and over 16 years of age who are convicted of offenses for which the imprisonment punishment is not less than one year. State ex rel. Maloney v. Proctor, 249 W 377, 25 NW (2d) 698.

One convicted of second degree murder may be given indeterminate sentence to state prison under 359.05, but no such person may be given indeterminate sentence to state reformatory or industrial home for women. 19 Atty. Gen. 32.

Sentence to reformatory to begin on date in past is erroneous and can be corrected only by motion or appeal to higher court. 24 Atty. Gen. 371.

Persons sentenced to the Wisconsin home for women pursuant to 54.03 (1), Stats. 1945, may be released before the end of their term only by pardon or by parole, although parolees may later be discharged by the approval of the governor. Persons sentenced to the home for women pursuant to 54.03 (3) may be released by discharge by the department of public welfare as well as by parole or pardon. 34 Atty. Gen. 342.

359.052 Trial and commitment records; execution. (1) When any offender is sentenced to the reformatory or to the home for women, the commitment paper shall consist of the warrant of commitment, and certified copies of the information, indictment or complaint, the plea of the accused, the testimony taken at the trial, the verdict, if there be one, and the judgment and sentence; which copies shall be delivered with the order or warrant of commitment to the officer executing it, and to the superintendent of the institution when the convict is delivered.

(2) In case no testimony is taken at the trial, a statement of the district attorney who prosecuted such case, giving the facts in connection with the case, and the statement of the defendant in court, shall be delivered in lieu thereof.

(3) The clerk of the court furnishing such copies or record shall be entitled to such compensation as may be fixed by the presiding judge, and shall be paid by the county in which trial is had as part of the court expenses.

(4) Whenever any person is sentenced to the reformatory, the order or warrant of commitment shall authorize the officer to whom it is issued to take charge of such convict and convey him to the reformatory and deliver him to the superintendent of that institution, who shall receive and confine him therein until he shall be discharged by due process of law.

(5) Whenever any woman is sentenced to the home for women the superintendent of said home shall, upon being notified of such sentence, designate and send some suitable woman who is employed in said home to take charge of the convict and convey her to said home; and said employe shall have all the powers of a police officer from the time of her appointment until such convict is delivered to the superintendent of said home. The expenses of making such transfer shall be paid by the county in which such person was convicted.

(6) Whenever any person is sentenced to the reformatory the court or magistrate pronouncing sentence shall immediately notify the superintendent of said institution thereof. If said institution be filled to the limit of its capacity, the convict shall be retained in the county jail until he or she can be received into said institution; but, if convicted of a felony, the court may, in its discretion, commit such convict temporarily to the state prison to be thence transferred as soon as may be. Notice of such temporary commitment shall be given to the superintendent and the commitment papers shall be delivered with the convict to the warden of the prison, who shall deliver them to said superintendent when the convict is transferred. [*1945 c. 343; 1947 c. 519*]

Note: See Comment of Interim Committee, 1947, under 359.051.

359.053 Sentence and commitment. (1) Male persons not less than 16 nor more than 30 years of age may be sentenced to the Wisconsin state reformatory if convicted of

a felony (other than murder in the first or second degree) or a misdemeanor punishable by imprisonment in the county jail or house of correction for one year or more.

(2) All commitments to the Wisconsin home for women shall be for one year or more.

(3) Female persons over 16 and not yet 18 years of age shall be committed either to the Wisconsin school for girls or the Wisconsin home for women. Female persons over 18 years of age shall be committed to the Wisconsin home for women. [*1931 c. 202; 1943 c. 313; 1945 c. 130, 343, 506; 1947 c. 519*]

Comment of Interim Committee, 1947: New 359.053 (1) restates old 54.02 (1). (2) is new. Old 54.02 (2) is obsolete and is omitted. The first sentence of (3) is new. (Bill 35-A)

Note: See notes to 359.051, citing State ex rel. Maloney v. Proctor, 249 W 377, 25 NW (2d) 698.

359.06 Sentence, to what jail. Whenever it shall appear to the court, at the time of passing sentence upon any convict who is to be punished by confinement in the state prison, state reformatory or county jail, that there is no jail in the county in which the offense was committed suitable for the confinement of such convict, the court may order the sentence to be executed in any county in this state in which there may be a jail suited to that purpose, and the expenses of supporting such convict shall be borne, if such convict was sentenced to imprisonment in the county jail, by the county in which the offense was committed.

359.07 State prison, sentence, terms, effect of escape. The sentence of any convict found guilty of treason, murder in the first degree as defined by law, kidnaping, or of any crime the minimum penalty for which is fixed by statute at 20 years or more, to imprisonment in the state prison, shall be for a certain term of time. In all other cases the sentence shall be for a term not less than one year and shall be for a general or indeterminate term of not less than the minimum nor more than the maximum term of imprisonment prescribed by law for the offense. In imposing the maximum term, the court may fix a term less than the maximum prescribed by law for the offense. All sentences shall commence at twelve o'clock, noon, on the day of such sentence, but any time which may elapse after such sentence, while such convict is confined in the county jail or is at large on bail, or while his case is pending in the supreme court upon writ of error or otherwise, shall not be computed as any part of the term of such sentence; provided, that when any person is convicted of more than one offense at the same time the court may impose as many sentences of imprisonment as the defendant has been convicted of offenses, each term of imprisonment to commence at the expiration of that first imposed, whether that be shortened by good conduct or not; and provided further that when any convict confined in said prison shall escape therefrom, the time during which he unlawfully remains absent from the prison after such escape shall not be computed as any part of the term for which said prisoner was sentenced to be confined in the prison. [*1943 c. 313*]

Note: Sentence to state prison ran concurrently with sentence to reformatory in case of prisoner who broke his parole, was sentenced to state prison for one year, escaped from sheriff on way to prison and, on being recaptured, was returned to reformatory, where he served balance of sentence, which was more than one year; prisoner must be discharged at expiration of term at the reformatory. 19 Atty. Gen. 13.

Phrase "the same to date from the day of original sentence" in commutation of sentence, does not relieve the prisoner from provision that his sentence does not begin until actual imprisonment under it. 20 Atty. Gen. 54.

Commutation providing that commuted sentence is "to commence as of the date or the commencement of the sentence imposed by the court," was not intended to refer to date of pronouncement of sentence where sentence provided that prisoner be held in county jail as material witness and that period of such detention should be part of his term. Term does not commence until he is received at prison. 20 Atty. Gen. 806.

Indeterminate sentence of from nine to ten months in state prison is authorized under 343.25 as special provisions. 21 Atty. Gen. 321.

Sentence to begin at termination of imprisonment for former crime is valid. 21 Atty. Gen. 555.

Where defendant has been found guilty on four counts, the judgment sentencing him to indeterminate sentences to run consecutively after service of minimum term for each count is valid. 21 Atty. Gen. 866.

Where defendant is sentenced on two counts, second sentence to begin after service of minimum time under first sentence, the sentences must be construed as consecutive. 25 Atty. Gen. 26.

Sentences of one to three years on each of four counts, sentences for first year to run consecutively and after that concurrently, held valid. 25 Atty. Gen. 108, 388.

Two or more sentences imposed by court at same time run concurrently unless court at time of imposition of sentence specifies they shall run consecutively. 26 Atty. Gen. 439.

Sentence to state prison commences on day of actual incarceration in state prison, regardless of any statement made by court, as to when sentence is to commence. 27 Atty. Gen. 329, 31 Atty. Gen. 3.

Sentence for general indeterminate term of not less than one year and not more than ten years, "in addition to the former sentence which you are now serving", is construed to mean that sentence would commence at expiration of sentence which prisoner was then serving. Sentence so construed is within power of court under this section. 27 Atty. Gen. 601.

Conviction under 340.55 is not conviction of kidnaping within meaning of 359.07. 28 Atty. Gen. 4.

Commutation of sentence of one A is construed to mean that two sentences run concurrently after second sentence was imposed. 28 Atty. Gen. 41.

When convict on parole from state prison violates his parole by committing a misdemeanor for which he is sentenced to county

jail or house of correction state prison sentence is tolled from date of violation until he is returned to state prison and time spent in county jail or house of correction does not count toward service of such prison sentence. (Stats. 1941) 30 Atty. Gen. 218 followed and applied. 31 Atty. Gen. 24.

Sentences in the state prison and the Milwaukee county house of correction may run concurrently. 34 Atty. Gen. 163.

359.08 Effect of release on habeas corpus. Whenever any person sentenced to a term of imprisonment on conviction for a crime shall be released from custody on habeas corpus before the expiration thereof and the court which last adjudicates the matter shall hold the imprisonment to have been legal and reverse the order of discharge, the time such person shall be at liberty under such order shall not be reckoned as a part of the term of his imprisonment, and such person may be arrested on proper process and imprisoned for the unexpired portion of the term for which he was originally sentenced.

359.09 Commitment to state prison. Whenever there is conviction of a felony in any court of this state, and the sentence of the court is to imprisonment for more than one year and it shall be proved or admitted on the trial that the defendant had been previously convicted of a felony, commitment shall be made to the Wisconsin state prison.

359.10 Judgment against corporation. Whenever any corporation, private or municipal, which shall have been indicted or informed against under the common law or under any statute of this state shall fail to appear after notice of such indictment or information, given and served by leaving a true copy of such indictment or information with the officers or persons upon whom a summons in a civil action against such corporation may be served, and twenty days shall have elapsed thereafter, the default of such corporation may be recorded, and the charges in such indictment or information shall be taken as true and judgment shall be rendered accordingly.

359.11 Collection of judgment. Whenever judgment shall be rendered against any corporation by default as aforesaid or upon a verdict the same shall be collected in the same manner as judgments in civil actions against like corporations.

359.12 Sentence of person previously convicted. When any person is convicted of any offense punishable only by imprisonment in the state prison and it is alleged in the indictment or information therefor and proved or admitted on the trial or ascertained by the court after conviction that he had been before sentenced to punishment by imprisonment in any state prison, or state reformatory, by any court of this state, or any other state or of the United States, and that such sentence remains of record unreversed, whether pardoned therefor or not, he may be punished by imprisonment in the state prison not less than the shortest time fixed for such offense and not more than twenty-five years.

Note: An information charging assault with intent to commit rape, and in a separate paragraph stating an unreversed previous conviction of a felony was strictly in accordance with this section. State v. Sullivan, 241 W 276, 5 NW (2d) 798.

A defendant convicted of manslaughter in the first degree under 340.10 was not subject to sentence under the repeater statute, 359.12, because of a prior conviction and sentence to imprisonment in an industrial school for boys or a city reformatory since such institution is not of the grade of the Wisconsin state prison or the Wisconsin state reformatory. State v. Blankenship, 242 W 195, 7 NW (2d) 424; State v. Jardine, 242 W 200, 7 NW (2d) 426.

359.13 Same. When any person is convicted of any offense punishable by imprisonment in the state prison or in the county jail, in the discretion of the court, and it is alleged in the indictment or information and proved or admitted on the trial or ascertained by the court after conviction that he had been before sentenced to imprisonment, either in any state prison or county jail, by any court of this state or of any other state or of the United States, and that such sentence remains of record and unreversed, whether pardoned therefor or not, he may be punished by imprisonment in the state prison not less than the shortest time fixed for such offense and not more than five years, or in the county jail not less than the shortest time fixed for said offense and not more than one year.

Note: Where defendant pleaded guilty to charge of obtaining $20 in money by false pretenses, and trial court, before sentence, ascertained that defendant previously had been convicted of felony, which also was admitted by defendant, and such admission was made part of record by stipulation, imposition of sentence of one to five years under "repeater" statute (359.13, 359.15) did not constitute error although information did not charge prior conviction. [Belter v. State, 178 W 57, distinguished.] Spoo v. State, 219 W 285, 262 NW 696.

359.14 Same. When any person is convicted of any offense punishable only by imprisonment in the county jail or by fine, or both, and it is alleged in the indictment, information or complaint and proved or admitted on the trial or ascertained by the court after conviction that he had been before sentenced to imprisonment, either in any state prison, state reformatory, house of correction or county jail, by any court of this state or of any other state or of the United States, and that such sentence remains of record and unreversed, whether pardoned therefor or not, such person may be punished by imprisonment in the county jail not less than the shortest time fixed for such offense and not more than

one year, or by imprisonment in the state prison not more than three years nor less than one year.

Note: An admission by the defendant, in prosecution under 343.401 for issuing worthless checks, that he had previously paid a fine for a traffic violation did not show that he had been sentenced to imprisonment or that the fine had been paid in a criminal prosecution brought under 85.69 and did not justify the trial court in sentencing the defendant to the state prison for the offense of issuing worthless checks. Grimes v. State, 236 W 31, 293 NW 925.

Where the first 2 counts of an information charged offenses punishable by fine or imprisonment in the county jail, and the last 3 counts merely alleged previous convictions which would render the defendant amenable to sentence as a repeater under 359.14, and the defendant pleaded guilty to each count, the trial court erred in imposing sentence on the last 3 counts as though they charged and as though there were convictions under them of separate substantive offenses other than the offenses charged in the first 2 counts, since the sole office of 359.14 is to increase the penalty for the subsequent offense of which the defendant is convicted, and not to make the defendant guilty of a separate offense for which he may be sentenced. State v. Miller, 239 W 334, 1 NW (2d) 178.

Prior convictions alleged for purpose of imposing penalty under repeater statute may be realleged in subsequent repeater complaint for purpose of imposing repeater penalty for subsequent offense. 29 Atty. Gen. 59.

359.15 Investigations after conviction; new issue as to former conviction. If such former conviction shall not have been charged in the information, indictment or complaint, then, after a plea of guilty is entered, or a verdict of guilty returned by the jury, and before sentence is passed, the court may ascertain in every case whether the defendant has been previously convicted of any offense in any court. For that purpose the defendant may be photographed and measured and all data taken necessary to his identification by means of identification bureaus and other records of crime. It shall be the duty of the district attorney and sheriff of the county to aid in such investigation, and the court may order the necessary disbursements thereby incurred to be paid in the same manner as the fees of witnesses upon the trial. After such investigation the district attorney may in writing charge the defendant with such former conviction, and if the defendant denies such charge, the court shall proceed promptly to try the issue thereby formed, and, if demanded by the defendant, shall impanel a jury therefor.

359.16 Same. In all counties containing a city of one hundred fifty thousand or more population, whenever it shall come to the knowledge of the court or of the prosecuting officer of said court that the offender then before the court is a repeater and on three or more occasions has been found guilty and sentenced by the court to the house of correction in said county, it shall be the duty of said prosecuting officer to amend said charge, and of the court to require that said charge formally be amended, setting forth that said offender is a repeater and that said offender on three or more occasions has been found guilty and sentenced by the court to the house of correction in said county, and upon conviction of said offender on said charge as amended, as herein provided, said offender shall be sentenced by the court as a repeater to the house of correction upon an indeterminate sentence for a period of not less than one year nor more than five years, subject however, to parole by the state department of public welfare. [*1943 c. 93*]

359.17 Masking aggravates crime. When any person is convicted or pleads guilty to the charge of having committed a breach of the peace, misdemeanor or felony and it is alleged in the indictment, information or complaint and proved or admitted on the trial, or ascertained by the court after conviction, that he committed the offense while his face was covered with a mask or other device so as to conceal his identity, such person may in addition to the maximum punishment fixed for such offense, in case of conviction of breach of the peace or misdemeanor, be imprisoned not to exceed one year in the county jail, and in case of felony not to exceed five years in the state prison.