

FEBRUARY 24, 1959

HONORABLE JOHN W. TRAMBURG, *Commissioner*
Department of Institutions and Agencies
Trenton, New Jersey

MEMORANDUM OPINION 1959—P-1

MY DEAR COMMISSIONER TRAMBURG:

We have been asked to define the status of an inmate now in State prison who was convicted of non-support and ordered to pay fines of \$1,000.00 to his wife and to his children pursuant to *N.J.S. 2A:100-2*. This statute expressly provides that a husband who deserts or willfully neglects the maintenance of his wife or children who are in destitute or necessitous circumstances may be convicted of a misdemeanor, and subjected to a fine which may be paid to the wife or the guardian of the children. Specifically, this person served his time but has paid none of the fine which was imposed. Your question is whether the prisoner must be (1) held until the fine is paid to the wife; (2) held for a period of time during which he is given credit toward the fine; or (3) paroled on condition that he pay the fine according to terms outlined by the Parole Board.

This statute is part of subtitle 10 (of Title 2A of the New Jersey Statutes) which is entitled "Crimes." It permits the sentencing judge to impose a fine which may be paid either into the public treasury or to the wife or children. In either case the statute describes the money to be paid by the defendant as "a fine." *N.J.S. 2A:100-2* makes it a crime to neglect a wife or children "in destitute or necessitous circumstances." The Legislature has distinguished between these two offenses in that it has permitted payment of the fine to be made directly to the wife or guardian of the children where they are in destitute or necessitous circumstances. This does not change the essential character of the payment as a punishment. Therefore, there is no reason to distinguish this type of fine from any other fine.

N.J.S. 2A:164-18 provides that where a defendant is convicted, he shall be kept in prison until the time of his confinement shall have expired and "the fine or fines and cost of prosecution be paid or remitted, or until he shall be otherwise discharged according to law." This provision is implicitly part of every sentence imposing a fine, including sentences for violation of *N.J.S. 2A:100-2*. Therefore, in default of payment of a fine imposed under the latter statute, or other discharge according to law, a person subjected to a fine under this statute must be held in confinement. However, this confinement will not continue indefinitely. *N.J.S. 2A:166-16* provides that any person held in confinement in a State penal institution solely in default of payment of a fine shall be given credit against the fine at the rate of \$3.00 for each day of confinement.

Alternatively, the inmate may be paroled on condition that he pay the fine through the probation office. *N.J.S.A. 30:4-123.15*. If a defendant is released on condition that he pay the fine and he thereafter defaults, parole may be revoked.

In summary, then, it is our opinion that a person ordered to pay a fine to his wife or children under *N.J.S. 2A:100-2* may be held in confinement in default of