

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1924.

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# A BILL

To provide for treatment of certain persons convicted of offences against the law; to amend the Crimes Act, 1900, and certain other Acts; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Treatment of Short title. Prisoners Act, 1924."

2. (1) This Act shall commence on the first day of January, one thousand nine hundred and twenty-five. Commencement, &c.

(2) Nothing in this Act shall affect any of the provisions of the Lunacy Act, 1898.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,— Definitions.

“Clinic” means the clinic of experts in psychiatry and psycho analysis constituted under this Act.

“Comptroller-General” means the Comptroller-General of Prisons.

“Defective” includes a person who displays some mental defect with or without some vicious or criminal propensity, and also includes a sexual pervert.

“Defectives division” means any place set apart as such by the Governor.

“Imprisonment” includes penal servitude.

“Judge” means judge of the Supreme Court or chairman of quarter sessions.

“Observation division” means any place set apart as such by the Governor.

“Prescribed” means prescribed by this Act or the regulations.

“Reformatory division” means any place set apart as such by the Governor.

“Regulations” means regulations made under this Act.

4. (1) The Governor may from time to time by notification published in the Gazette set apart any prison or part thereof or other suitable place to be a reformatory division, or a defectives division, or an observation division. Governor may set apart suitable places as reformatory, defectives, or observation divisions.

(2) Every reformatory division, defectives division, and observation division shall be deemed to be a prison within the meaning of the Prisons Act, 1899.

5. (1) The Governor may appoint three legally qualified medical practitioners reputed to be skilled in psychiatry and psycho analysis to form a clinic. Appointment of clinic.

(2) The members of the clinic shall not during their tenure of office be subject to the provisions of the Public Service Act, 1902, or any Act amending that Act.

(3)

(3) The clinic shall perform such duties as are prescribed.

(4) The remuneration of the members of the clinic shall be as fixed by the Governor and shall be payable out of funds voted by Parliament.

6. (1) With the approval of the Governor the Comptroller-General may appoint such and so many persons as he deems fit to be probation officers for the purposes of this Act.

(2) The duties of probation officers shall be as prescribed.

(3) The remuneration of probation officers shall be fixed by the Governor, and shall be payable out of funds voted by Parliament.

7. (1) Where any person apparently of the age of sixteen years or upwards is convicted of an indictable offence, the judge before whom such person is convicted may—

Powers of judge upon conviction for an indictable offence.

(a) order as part of his sentence that on the expiration of the term of imprisonment then imposed upon him he be detained in a reformatory division; or

(b) without imposing any term of imprisonment upon him—

(i) order that he be committed to a reformatory division and be detained therein; or

(ii) order that he be released on probation for a period not exceeding three years.

(2) The judge may in addition to any such order, order the offender to pay a sum by way of reasonable compensation to the person injured or defrauded by the offender, and may order that such compensation shall be a charge upon any moneys earned by the offender during the period of his imprisonment, detention, or probation.

(3) Before making any such order the judge may—

(a) hear evidence to enable him to determine whether the order is necessary or desirable;

(b) consider any report or representations which may be made as to the advisability of making the order;

(c)

- (c) have regard to the age, health, mental condition, antecedents or character of the offender, his habits or tendencies, the character of his known associates, the nature of his offence or any special circumstances connected with it.

**8.** (1) Where any person apparently of the age of sixteen years or upwards is summarily convicted by a court of petty sessions or children's court of an offence for which the court has power to impose a sentence of imprisonment for one month or upwards, and it is proved—

Powers on summary conviction. cf. 4 & 5 Geo. V, c. 58, s. 10.

- (a) that he has previously been convicted of any offence either in the State of New South Wales or elsewhere and either before or after the commencement of this Act; or
- (b) that having been released on probation he has failed to observe the conditions of his release,

the court, if it thinks it expedient that the offender should be dealt with in accordance with the provisions of section seven of this Act may, without imposing a sentence upon him, by order in the prescribed form commit the offender to prison, to be brought before a judge to be so dealt with.

(2) (a) In lieu of committing the offender to prison as aforesaid, the court may bind the offender over by recognizance, with or without sureties, to appear before the judge.

(b) Where it appears to a justice by information on oath that any such person has failed to surrender himself in accordance with the conditions of his recognizance, the justice may issue a warrant under his hand to apprehend him and bring him before a court of petty sessions.

(c) Upon proof being given that such person has failed to surrender himself as aforesaid, the court of petty sessions may forfeit the recognizance and may by order in the prescribed form commit the offender to prison to be brought before a judge to be dealt with as provided in section seven of this Act.

(3)

(3) Any warrant necessary for the committal to prison or detention of a person under this section may be issued and signed by any justice.

(4) A person committed to prison by an order under this section shall by virtue of the order and without any writ of habeas corpus or other writ be brought before the judge accordingly.

(5) A person brought up under any such order, or surrendering himself in accordance with the conditions of his recognizance, shall be deemed to be in the legal custody of the police officer, gaoler, or other officer having the temporary charge of such person.

(6) An order made in pursuance of this section may name a judge before whom the person is to be brought and it shall be the duty of the clerk of the peace to bring such person before the judge named or before such other judge as the Attorney-General shall direct.

**9.** The judge before whom such offender is brought shall inquire into the circumstances of the case, and—

Procedure before judge.

(a) may deal with the case in any way that the court of petty sessions or children's court might have dealt with it (and the provisions of the Justices Act, 1902, or the Child Welfare Act, 1923, as the case may be shall apply to the proceedings and the enforcement of any order made therein); and

(b) in addition thereto or in place thereof may exercise all or any of the powers conferred upon a judge by section seven of this Act, in the case of a person convicted of an indictable offence.

**10.** Where a person who has been convicted by a court of petty sessions appeals under the provisions of section one hundred and twenty-two of the Justices Act, 1902, against his conviction, the judge may, if he is of opinion that the conviction should be affirmed, and that the court of petty sessions might have dealt with the matter in the manner provided by section eight of this Act, exercise all or any of the powers conferred by section seven of this Act.

Procedure on appeal from summary conviction.

*Treatment of Prisoners.*

**11.** Where a person detained at or after the commencement of this Act in a prison (not under civil process or under sentence of death) appears to be a defective, the Comptroller-General may by order under his hand direct such person to be transferred to an observation division.

Transfer to observation division.

**12.** (1) Where a person has been transferred to an observation division, the clinic shall, so soon as practicable, and in all cases within three months of the transfer, certify to the Comptroller-General whether the person transferred is or is not a defective.

Transfer on certificate of clinic.

(2) Where the clinic certifies that a person is a defective, the certificate shall be accompanied by a report by the clinic as to the advisability of transferring such person to a defectives division or a reformatory division.

(3) The Comptroller-General shall, by order under his hand, retransfer to prison any person whom the clinic certifies is not a defective.

(4) The Governor may order the transfer to and detention as a defective in a defectives division or a reformatory division of any person whom the clinic certifies to be a defective.

**13.** (1) Any person detained as a defective may at any time make application to the Minister to have the question of his further detention in the defectives division or reformatory division reviewed by a judge.

Review by judge of detention of defective.

(2) The Minister shall forthwith in the manner prescribed refer the matter to a judge for inquiry: Provided that not more than one such application from the same person shall be so referred during any period of twelve months.

(3) The inquiry shall be held in chambers or, if the defective so requests, in open court, and the judge may receive such evidence as he deems material to enable him to decide whether the further detention of the applicant in such division is necessary or desirable, including—

- (a) the report of any duly qualified medical practitioner who, at the request of the defective, his guardian, relative, or friend, has made a medical examination of the defective; and
- (b) a report by the clinic. (4)

*Treatment of Prisoners.*

(4) The judge shall furnish a report of such inquiry together with his recommendation thereon to the Governor.

**14.** If at any time the Governor is satisfied upon the report of the clinic that any person detained as a defective is sufficiently recovered or treated he may order that he be—

Governor may transfer or release on probation, &c.

- (a) transferred to a prison, there to serve the unexpired residue of his sentence; or
- (b) discharged; or
- (c) released on probation for a period not exceeding three years.

**15.** (1) Where any person is at or after the commencement of this Act detained in prison under sentence of imprisonment (not being imprisonment under civil process or upon a sentence of death), and it appears to the Comptroller-General that such person can be more suitably and advantageously transferred to and detained in a reformatory division for reformatory treatment, it shall be the duty of the Comptroller-General to report to that effect to the Minister, accompanying the report with a full record of such person and a statement of the reasons for so reporting.

Transfer to reformatory division, &c.

(2) The Governor may order that the person referred to in the report shall be transferred accordingly.

(3) Where the behaviour of any person so transferred from a prison to a reformatory division is, in the opinion of the Comptroller-General, such as to be injurious to the discipline of the reformatory division or to the persons detained therein, he shall report to the Minister concerning the case, accompanying his report with a full record of such person.

(4) The Governor may order that the person referred to in the report be transferred back to prison accordingly.

(5) Any person who has been transferred from a reformatory division back to prison shall, pursuant to the original authority under which he was imprisoned, serve the unexpired residue of his sentence; and the time spent by him in the reformatory division shall not be reckoned as part thereof unless otherwise directed by the Governor.

cf. Vict. Act, s. 519 (3).

(6)

(6) A person transferred from a prison to a reformatory division under the provisions of this section shall not be detained in the reformatory division for any longer period than the unexpired residue of his sentence.

**16.** Subject to the provisions of this Act, every person detained in a reformatory division or a defectives division shall be so detained during the Governor's pleasure. Detention during Governor's pleasure.

**17.** (1) Every person detained in a reformatory division shall, subject to the regulations, work at some trade or vocation or be employed in some labour. Detainee to work. Vict. Act, s. 525.

(2) Such portion as may be prescribed of—

- (a) the net proceeds arising from the sale or disposal of the products of his work; or
- (b) the wages earned by him according to the scale prescribed for the class of labour in which he is employed,

shall be credited to him.

(3) The manner of dealing with the remainder of such net proceeds or wages shall be as prescribed; and such amounts thereof as may be prescribed shall, in the discretion of the Minister, be applied from time to time towards the maintenance, during the period of his detention, of his wife and family (if any) or of any person dependent upon him or in payment of moneys directed to be paid by him by any order under the provisions of Part X of the Child Welfare Act, 1923.

(4) Any sum standing to the credit of the person detained shall on his release be held by the Minister and applied in such manner as the Minister thinks fit for his benefit.

**18.** (1) The Governor may order that any person who is detained in a reformatory division be discharged or that he be released upon probation. Discharge or release on probation.

(2) The period of such probation shall not exceed three years.

**19.** (1) An order under this Act for the release of any person upon probation shall set out the conditions of such release. Conditions of release.

(2) A copy of the order shall be served upon the person to be released.

(3)

(3) The conditions of the release of any person upon probation under this Act may prescribe—

- (a) the probation officer or other person under whose supervision he shall be placed ;
- (b) the times at which and where he shall report himself, his place of residence and occupation and the method of so reporting ; where he shall live and such other conditions for securing such supervision as may be specified ;
- (c) that he shall not leave the State without the consent of the Minister ;
- (d) that he shall not associate with thieves or other undesirable persons or frequent undesirable places and may specify such persons and places ;
- (e) that he shall abstain from intoxicating liquor and the use of intoxicating or narcotic drugs ;
- (f) the manner in which, and the persons to whom, any compensation ordered to be paid shall be paid ; and
- (g) generally for securing that he shall lead an honest and industrious life.

**20.** The Minister may, if he is satisfied that the conduct of the offender has been such as to make it unnecessary that he should remain longer under supervision, discharge such offender from the further observance of the conditions of his release.

Discharge from conditions of probation. cf. 7 Edw. VII, c. 17, s. 5.

**21.** (1) Where it appears to a justice by information on oath that any person released upon probation has at any time during the period of his probation failed to comply with any of the conditions of his release, such justice may issue a summons under his hand requiring such person to attend before a court of petty sessions, or may issue a warrant under his hand to apprehend him and bring him before a court of petty sessions to be dealt with as hereinafter provided.

Failure to observe conditions. cf. Vict. Act, s. 528.

(2) If during the period of probation a person so released—

- (a) is proved to any such court of petty sessions to have failed (without some excuse which such court deems reasonable) to comply with any of the conditions of his release ; or
- (b)

- (b) is convicted of any offence punishable on summary conviction for which imprisonment for a period of one month or more may be imposed, or of an offence under section 8A of the Vagrancy Act, 1902,

then and in any of such cases the court of petty sessions before which such proof is given or the court of petty sessions before which he is so convicted may by order direct that such person on the completion of the term of imprisonment (if any) then imposed upon him, be committed to and detained in a reformatory division; and he shall be so committed and detained accordingly; and any warrant necessary for his committal or detention may be issued and signed by any justice.

(3) Where the person so released is under the age of eighteen years, the court to exercise the powers and authorities conferred by this section on a court of petty sessions, shall be a children's court.

**22.** If during the period of probation none of the events aforesaid happens, the person so released shall be deemed to have suffered in full any imprisonment and detention, or detention, to which he was sentenced.

Effect of satisfactory probation.

**23.** (1) If the Comptroller-General reports to the Minister that it is desirable that any person detained in a reformatory division should be permitted to leave such division temporarily—

Provision for permitting prisoners to leave reformatory division for certain purposes.

- (a) for the purpose of being treated at any hospital; or
- (b) for the purpose of visiting a relative believed to be dying; or
- (c) for any other reason which appears to the Comptroller-General to be sufficient,

cf. Vict. Act No. 2,758, 1915, s. 15.

the Minister may by writing under his hand make an order that such person may, subject to any conditions set forth in the order, be permitted to leave the division for the purpose and for the period specified in the order.

(2) The Minister may in the order direct that such person shall during the said period be in the custody of any member of the police force, gaoler, or officer named in the order who shall in due course return

Custody during absence.

return him into the custody from which he was removed pursuant to the order; and until such return he shall be deemed to be in the legal custody of the member of the police force, gaoler, or officer named in the order and acting thereunder.

(3) If in any case the Minister is of opinion that it is impracticable to require such person to be in the custody of any member of the police force, gaoler, or officer during the period of such absence from the division, the Minister may make the order without naming any member of the police force, gaoler, or officer therein; and in every such case such person shall be deemed to be in the legal custody of the superintendent or matron of the division.

(4) Any person permitted to leave a reformatory <sup>Penalties.</sup> division under this section who—

- (a) escapes or attempts to escape from the custody of any such member of the police force, gaoler, or officer;
- (b) does not return to the said division immediately on the expiration of the period mentioned in the order; or
- (c) is guilty of a breach of any of the conditions of the order,

may, without any warrant other than this Act, be arrested by any member of the police force, or by any person thereto authorised in writing by the Minister either generally or for the particular case, and be returned to the reformatory division, and shall within the meaning of section thirty-seven of the Prisons Act, 1899, be deemed to have escaped or attempted to escape, and shall be liable to be imprisoned according to law; and after the expiration of any such term of imprisonment (if any) shall be returned to and be detained in a reformatory division; or if no such term of imprisonment is imposed, he shall be returned to the reformatory division and be detained therein; and any warrant necessary for the purposes of this section may be issued accordingly.

**24.** (1) It shall be the duty of the Comptroller-General— Powers and duties of Comptroller-General.

- (a) to make careful inquiry as to whether any persons detained in any reformatory division are sufficiently reformed to be released on probation or whether there are any good and sufficient reasons for the release on probation of any persons so detained ; Vict. Act, s. 531.
- (b) to make recommendations to the Minister as to the release on probation of any person detained in a reformatory division or a defectives division and stating the reasons for so recommending ;
- (c) in making any recommendation as to such release to have regard to the safety of the public or of any individual or class of persons and the welfare of the person whom it is proposed to release ;
- (d) to report to the Minister as to any matters on which the Minister may desire a report with regard to any such release on probation or the transfer of any person from prison to a reformatory division, or from a reformatory division to a prison, or from a prison to a defectives division ;
- (e) to perform such other functions as may be prescribed.

(2) On or before the thirtieth day of September in each year the Comptroller-General shall report to the Minister as to—

- (a) the number of persons detained, transferred, or released on probation during the period covered by the report ; and
- (b) generally as to the operation and effect of the provisions of this Act and the regulations.

**25.** It shall be the duty of every probation officer, Duties of probation officers. subject to the regulations—

- (a) to visit and receive reports from any person under the supervision of such probation officer at such reasonable intervals as may be prescribed ;

(b)

- (b) to see that such person observes the conditions of his release on probation ;
- (c) to advise, assist, and befriend such person, and, when necessary, to endeavour to find him suitable employment ;
- (d) to report every three months to the Comptroller-General as to the conduct of persons under his care.

**26.** No authority other than an order under this Act, or a copy thereof purporting to be signed and certified as a true copy by the officer to whose custody the original is intrusted, shall be necessary to warrant the detention or transfer of any person in pursuance of such order: Orders.  
cf. Vict. Act,  
s. 520.

**27.** (1) The Governor may make regulations— Regulations.

- (a) for the conduct, management, control, inspection and supervision of reformatory divisions and defectives divisions ;
- (b) for the good order, discipline, employment, and health of persons detained therein ;
- (c) prescribing the trades, vocations, or classes of work at which persons detained in reformatory divisions are to be employed ;
- (d) prescribing the mode of sale and disposal of the products of the work of persons so detained ;
- (e) prescribing the disposal of the proceeds of such sale ; or the rate of wages to be paid to persons detained in reformatory divisions ;
- (f) empowering visiting justices to impose punishments for misconduct, idleness, or breaches of discipline by persons while undergoing detention in a reformatory division or a defectives division, and to inflict fines which may be charged against the earnings of such person while undergoing detention ;
- (g) prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Such regulations shall—

- (a) be published in the Gazette ;
- (b) take effect from the date of such publication, or from a later date to be specified in the regulations ;
- (c)

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(c) be laid before both Houses of Parliament within fourteen sitting days after publication, if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

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