

VICTORIA.



ANNO VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

· CCXIX.

An Act to consolidate the Law relating to Gaols.
[2nd June, 1864.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows—

1. This Act shall be called and may be cited as "*The Statute of Gaols 1864*" and shall come into operation on the first day of January A.D. One thousand eight hundred and sixty-five.

2. The several Acts and parts of Acts mentioned in the schedule to this Act to the extent to which the same are therein expressed to be repealed shall be and the same are hereby repealed but such repeal shall not affect any proclamation sentence rule regulation appointment order proceeding warrant direction offence or other thing heretofore passed made done or committed but any such proclamation rule regulation appointment order or direction may be rescinded altered or otherwise dealt with as if the same had been made or passed under this Act and all things lawfully done and all rights conferred or acquired and all offences committed and penalties incurred under any of the said repealed Acts or parts of Acts before the coming into operation of this Act shall be continued and be preserved and shall be prosecuted and enforced as if this Act had not been passed.

3. All buildings erections houses enclosed places and premises hereafter to be erected built enclosed purchased enlarged or maintained at the public expense as and for public gaols prisons houses of correction and penal establishments within Victoria which are from time to time proclaimed by the Governor in Council by notice in the *Government Gazette* as such public gaols prisons houses of correction or penal establishments shall from and after the publication of such notice be severally deemed and taken to be the public gaols prisons houses of correction and penal establishments (hereinafter called "gaols") respectively of the place or district where the same are situated and shall be subject to the several provisions made for the regulation discipline management and care of the public gaols prisons houses

Title.

Acts repealed.
Schedule.

Governor in Council
may appoint gaols
&c.

Statute of Gaols.

houses of correction and penal establishments already erected (also hereinafter called "gaols") and of the prisoners confined within the same.

Penal establishments

4. The Governor in Council may from time to time by notice in the *Government Gazette* appoint places in Victoria at which male offenders under any sentence of detention with hard labor on public works shall be detained and kept to hard labor and may from time to time by a like notice alter or revoke any such appointment and every place so appointed shall be deemed to be a penal establishment within the meaning of this Act.

Gaols to be also houses of correction unless otherwise proclaimed.

5. Except where it is otherwise proclaimed by the Governor in Council every gaol shall be and be taken for all purposes as being equally a house of correction and a prison for debtors and also every house of correction shall be taken to be a prison.

Governor in Council may proclaim hulk as a public prison.

6. The Governor in Council may proclaim any hulk or floating prison (hereinafter called "hulk") to be used as a public prison for the reception and safe keeping of all prisoners convicted and sentenced for any offences by any court of Victoria and may define by proclamation the limits and boundaries around such hulk within which no person shall come and the place of embarking and landing prisoners to and from such hulk and such proclamations from time to time may vary alter new assign and revoke.

Appointment of officers.

7. The Governor in Council may appoint a superintendent overseer and other officers and persons in and for every such hulk and every such superintendent and overseer shall have and exercise on the said hulk such and the like powers and authorities as are by law incidental to the office of a gaoler in any gaol on land And every prisoner confined in such hulk as aforesaid shall be subject to the like rules regulations and discipline as prisoners confined in any gaol on land are subject or liable to.

Sheriff and other officer to have control of gaols and hulks.

8. All gaols and hulks shall be and they are hereby declared to be under the charge care and direction of the sheriff of Victoria (or if within a circuit district of the sheriff of such circuit district) or such other officer as the Governor in Council may appoint for that purpose subject however to the control of the Governor in Council.

Governor in Council may make rules.

1 & 2 Vic. c. 82, s. 8.

9. The Governor in Council may from time to time make rules and regulations for the safe custody classification hours of labor and mode of employment of any offenders confined in any gaol or hulk and otherwise for the management and good government of such offenders and gaols and hulks and for prescribing the offences which if committed in any gaol or hulk by any male prisoner whose age does not exceed sixteen years shall be punished by whipping and for prescribing the maximum number of strokes for each offence and the instrument wherewith they shall be inflicted and such rules and regulations from time to time may vary alter and revoke provided that the judges of the Supreme Court may make such rules and regulations for the control and management of debtors in any gaol as to the said judges shall seem fit.

Whipping in certain cases.

10. If any such male prisoner whose age does not exceed sixteen years as aforesaid shall commit any such offence he shall be liable in the discretion of the visiting justice to be whipped either in addition to or in lieu of any other punishment imposed by this Act and the visiting justice shall in each case fix the number of strokes to be inflicted not exceeding the number in such case prescribed by the rules and regulations aforesaid and such whipping shall be inflicted privately and in the presence of the said visiting justice who shall within seven days send in a report in writing of the particulars of the offence and the sentence

Statute of Gaols.

sentence to the Minister in whose department this Act shall for the time being be administered.

11. The Governor in Council may nominate and appoint some fit and proper person being a magistrate to be the visiting justice of each gaol and hulk and may remove such visiting justice and may appoint another in his stead and every such visiting justice shall be required to visit such gaol and hulk at least once in every week unless prevented by illness or other sufficient cause and shall from time to time make such reports to the Chief Secretary as may be required by the order of the Governor in Council.

Governor in Council may appoint visiting justices.

12. Nothing herein contained shall be taken to abridge or affect the power of any judge of the Supreme Court or of any justice having jurisdiction in any part of Victoria to visit and examine any such gaol or hulk at any time when he may think fit.

Power of judges and justices not affected.

13. The Governor or any officer specially authorised by him by writing under his hand may cause any male person undergoing imprisonment for any criminal offence or misdemeanor by the sentence of any court of competent jurisdiction whether sentenced to imprisonment with hard labor or to imprisonment only to be during the whole or any period of his sentence employed at such labor and in such place as the Governor or such officer as aforesaid directs but such labor in the case of prisoners sentenced to imprisonment only shall not be severe Provided that any court of competent jurisdiction in passing sentence upon any prisoner may exempt such prisoner from the operation of this section.

Criminal offenders may be kept to hard labor.

14. The Governor in Council may order the discharge from prison of any person who may be imprisoned in default of finding sureties to keep the peace or to be of good behaviour and of any person who may be imprisoned for non-payment of any sum of money imposed as a penalty or forfeiture under any law now or hereafter to be in force the payment whereof or of any part whereof shall be remitted by the Governor in Council under any law now or hereafter to be in force.

Discharge of certain prisoners.

15. The sheriff or other officer having the charge care and direction of any gaol or hulk may order all such persons as are sentenced to imprisonment without being sentenced to hard labor (except such prisoners as maintain themselves) to be set to some work or labor which is not severe.

Prisoners may be set to work.

16. No person so sentenced who has the means of maintaining himself shall have any claim to be supplied at the public expense.

Maintenance of certain prisoners.

17. Any male person lawfully imprisoned for any crime misdemeanor or offence by the sentence of any court of competent jurisdiction or employed at labor as a criminal on the roads or other public works of Victoria who escapes or attempts to escape from any gaol or hulk or from the custody of any constable gaoler or other officer in whose custody he may be shall be guilty of felony and being lawfully convicted thereof shall be liable to be imprisoned and kept to hard labor with or without irons for any period not exceeding five years.

Offenders attempting to escape guilty of a felony.

18. Any person who conveys or causes to be conveyed or who delivers or causes to be delivered to any person for the purpose of being conveyed into any gaol or on board of any hulk in which any prisoner is confined or who secretes or leaves upon or about any road public work gaol hulk or other place where any such prisoners are usually employed or confined for the purpose of being found or received by any such prisoner any article of disguise instrument arms weapon or any poisonous or deleterious drug or any other article or thing likely to be used for the purposes of escape shall be deemed and taken to have delivered the same to

Punishment on persons aiding in escape.

Statute of Gaols.

to aid and assist the escape of a prisoner from such gaol hulk or other place even though no escape may have been attempted And any such person or any person who in any other manner aids abets or assists or attempts to aid abet or assist any prisoner to escape from any such gaol hulk or other place may be apprehended by any constable or other person without warrant and be by him detained and kept in safe custody until such offender can be brought before two justices who may hear and determine the alleged offence and such offender shall upon conviction thereof or of any of such offences forfeit and pay a penalty of not less than fifty pounds nor more than one hundred pounds and in default of payment or in the discretion of such justices may be imprisoned and kept to hard labor for any period not exceeding two years.

Harboring prisoners
illegally at large.

19. Any person who harbors in or about his house lands or otherwise or in any manner employs any person under sentence of imprisonment and illegally at large shall on conviction thereof before any justice forfeit and pay a sum of not less than one pound or more than fifty pounds Provided that if it be proved to the satisfaction of such justice that the person complained against used due and proper diligence in ascertaining whether the person so illegally at large was free or not and that such first-mentioned person had reasonable ground for believing that the person so illegally at large was free it shall not be imperative on such justice to impose any penalty.

Punishment of certain
offences.

20. Any two justices one of whom shall be a visiting justice may enquire in a summary way into any charge of absconding insubordination assault upon or attempt to do any bodily injury to any officer or prisoner or any riot or tumult in such gaol or hulk or at such roads or other public works or any wilful and malicious destruction or injury of or attempt at the wilful and malicious destruction or injury of any such gaol or hulk or any furniture thereof or of any public works or of any implements used thereon brought against any prisoner and such justices may in their discretion sentence such prisoner upon conviction to be kept to hard labor with or without irons for any term not exceeding two years or in their discretion to be kept in solitary confinement for any portion of such term not exceeding three months in periods none of which shall exceed one month and which shall be at intervals of at least one month and may direct that during such confinement such prisoner shall be deprived of any particular portion of the ordinary diet of the prisoners in the same place of punishment or confinement.

Punishment of lesser
offences.

21. Any visiting justice may enquire in a summary way into any charge of attempting to abscond idleness insolence refusal to work disobedience of orders use of indecent abusive or improper language or breach or infringement of any rule or regulation duly made or any other misconduct brought against any prisoner and such visiting justice may in his discretion sentence such prisoner upon conviction to be kept at hard labor with or without irons for any term not exceeding six months for the first offence and not exceeding eighteen months for a second or subsequent offence or to be kept in solitary confinement either continuously or at such intervals as he shall think fit for any period not exceeding twenty-one days for the first offence and not exceeding thirty days for a second or subsequent offence and may direct that during such confinement such prisoner shall be deprived of any particular portion of the ordinary diet of the prisoners in the same place of punishment or confinement.

Prisoners wilfully
disabling them-
selves.

22. If any person under any sentence of detention with hard labor on public works shall in order to evade labor wilfully disable himself or shall designedly prevent or protract the cure of any disease

or

Statute of Gaols.

or complaint which he may have contracted every such offender being convicted of such offence before any visiting justice shall be liable to serve for such further time as such person shall have been so disabled or delayed from labor as aforesaid and in every such case a certificate under the hand of the surgeon who shall have the care of and be attending upon such person that he had so wilfully disabled himself or had designedly prevented or protracted the cure of any such disease or complaint as aforesaid shall be deemed sufficient proof of such offence.

23. The period of any imprisonment hard labor or solitary confinement under any of the provisions of this Act shall not be deemed or taken as a portion of the period of imprisonment or hard labor to which such prisoner shall have been previously sentenced.

Imprisonment not to form part of original sentence.

24. Any person who holds or attempts to hold any communication with any prisoner undergoing sentence or who delivers or in any manner whatsoever endeavors or attempts to deliver or cause to be delivered to any such prisoner or introduces or attempts or endeavors to introduce or cause to be introduced into any gaol or hulk any money article of clothing letter tobacco or any other article or thing whatsoever not allowed by the rules and regulations aforesaid or who lurks or loiters about any road or other public works or any gaol or other place in which such prisoners may be confined or employed for any of the purposes aforesaid or delivers or causes to be delivered to any other person any such money letter tobacco article or thing for the purpose of being conveyed or introduced as aforesaid or who secretes or leaves upon or about any place where any such prisoner as aforesaid is usually employed any such money letter tobacco article or thing for the purpose of being found or received by such prisoner or who in any other manner conveys or causes to be conveyed to any such prisoner any such money letter article or thing may be apprehended by any constable or by any person in whose custody any such prisoner then is without warrant and may be by such constable or other person detained and kept in safe custody until he can be brought before a justice and such justice may hear and determine such offence and upon conviction any such offender shall for any such offence forfeit and pay a penalty not exceeding thirty pounds and in default of payment or in the discretion of such justice may be imprisoned and kept to hard labor for any period not exceeding three months.

Penalty for holding communication.

25. Any person loitering about any such gaol public road works or other place who refuses or neglects to depart therefrom upon being duly warned so to do by any constable or authorised person shall be deemed and taken to be lurking or loitering about such gaol public road or other place for the purposes aforesaid.

Unlawful purposes presumed.

26. Any person who approaches any hulk in which any prisoner is confined or who comes within the limit or boundary marked out by any buoys surrounding any such hulk in any ship boat or other craft unless driven within the same by stress of weather or who lands or attempts to land upon or embarks or attempts to embark from any point of land bay inlet cove or other place which has been proclaimed as the place of embarking or landing prisoners to or from any such hulk or which is enclosed or marked off in any other manner for any of such purposes or for the confinement or employment of any such prisoner may be apprehended by any constable or by any other person whosoever without warrant and be by him detained and kept in safe custody until he can be brought before two justices and any ship boat or other craft which any such persons may be in or may have landed from or embarked in or attempted to land from or embark in may be seized and detained by any

No person to approach hulk.

Statute of Gaols.

any such constable or person and every such offender shall upon conviction before any two justices forfeit a penalty of not less than five pounds nor more than thirty pounds and in default of payment or in the discretion of such justices may be imprisoned and kept to hard labor for any period not exceeding six months and upon any such conviction any ship boat or other craft which is so seized as aforesaid shall be forfeited to Her Majesty.

Governor may direct removal of prisoners.

27. The Governor may by warrant under his hand from time to time when and as he may deem necessary direct the removal from any gaol or hulk of any prisoner confined therein to any other gaol or hulk within Victoria and upon every such removal every such offender shall be subject to be kept at such gaol or hulk for the residue of his sentence or until removal by legal authority.

Power for sheriff to remove prisoners.

28. The Sheriff of Victoria may by warrant under his hand cause the removal of any prisoner under sentence from any one gaol under the charge care and direction of the said sheriff or of the sheriff of any circuit district to any other such gaol provided he report such removal within twenty days to the Chief Secretary for the approval of the Governor.

Sec. 28 of "*Justices of the Peace Statute 1864*" not repealed.

29. Nothing in this Act contained shall be deemed to repeal the twenty-eight section of the "*Justices of the Peace Statute 1864*" but no offender shall be liable to be punished for the same offence under the said section and this Act.

Summary proceedings. No *certiorari*.

30. All proceedings under this Act shall be had and taken in a summary way and no such proceeding shall be removed by *certiorari* into the Supreme Court.

Application of fines.

31. All fines and penalties under this Act shall be appropriated to the police reward fund.

Statute of Gaols.

SCHEDULE.

Date of Act.	Title of Act.	Extent of Repeal. Sec. 2.
3 Wm. IV. No. 3 ...	<i>"An Act to consolidate and amend the laws for the transportation and punishment of offenders in New South Wales and for defining the respective powers and authorities of General Quarter Sessions and of Petty Sessions and for determining the places at which the same shall be holden and for better regulating the summary jurisdiction of Justices of the Peace and for repealing certain laws and ordinances relating thereto."</i>	So much as has not been already repealed
3 Vic. No. 22 ...	<i>"An Act to abolish the transportation of female convicts and to provide for the more effectual punishment of female offenders within the Colony of New South Wales."</i>	The whole.
4 Vic. No. 10 ...	<i>"An Act to amend an Act intituled 'An Act to consolidate and amend the laws for the transportation and punishment of offenders in New South Wales and for defining the respective powers and authorities of General Quarter Sessions and of Petty Sessions and for determining the places at which the same shall be holden and for better regulating the summary jurisdiction of Justices of the Peace and for repealing certain laws and ordinances relating thereto.'"</i>	The whole.
5 Vic. No. 3 ...	<i>"An Act to repeal so much of an Act intituled 'An Act to abolish the transportation of female convicts and to provide for the more effectual punishment of female offenders within the colony of New South Wales' as authorises the confinement of any female offender in a dark cell."</i>	The whole.
11 Vic. No. 34 ...	<i>"An Act to substitute other punishments for transportation beyond the seas."</i>	Secs. 5 and 6.
16 Vic. No. 32 ...	<i>"An Act to make provision for the better Controul and Disposal of Offenders."</i>	So much as has not been already repealed.
17 Vic. No. 26 ...	<i>"An Act to amend an Act intituled 'An Act to make provision for the better Controul and Disposal of Offenders.'"</i>	The whole.

MELBOURNE:

By Authority: JOHN FERRES, Government Printer.