

TASMANIA.

**THE INDETERMINATE SENTENCES
ACT, 1921.**

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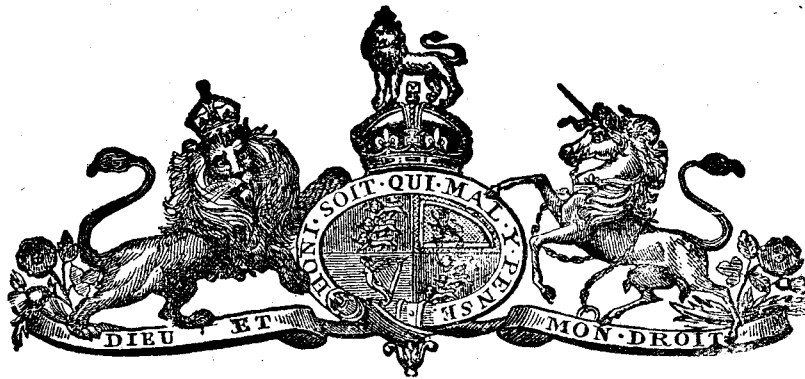
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1921.

ANNO DUODECIMO

GEORGII V. REGIS.

No. 44.

AN ACT to provide for the Passing of Indeterminate Sentences on certain Criminals and Offenders and for other purposes.

A.D.
1921.

[30 January, 1922.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as "The Indeterminate Sentences Act, 1921." Short title.

2 "The Habitual Criminals and Offenders Act, 1907," is hereby repealed. Repeal. 7 Ed. VII. No. 17.

3 In this Act—

"The Board," means the Indeterminate Sentences Board, Interpretation. constituted under this Act.

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Indeterminate sentence on habitual criminal, Cf., No. 2637 of 1915 (Vic.), s. 514.

Additional evidence.

Indeterminate sentence on person convicted of offence before a judge of the Supreme Court. Cf. *ibid.*, s. 515.

Additional evidence.

Power of court of petty sessions to order persons convicted of certain offences to be brought before judge of Supreme Court to be dealt with under this Act. Cf. *ibid.*, s. 516.

4—(1) When any person, apparently of the age of Seventeen years or upwards, is convicted on information filed in the Supreme Court, of any offence, and has been previously convicted on information so filed on at least two occasions of any offence or offences (whether of the same description of offence or not) the judge of the Supreme Court before whom such person is convicted, may declare that he is an habitual criminal, and direct as part of his sentence that, on the expiration of the term of imprisonment then imposed upon him, he be detained during the Governor's pleasure in a reformatory prison.

(2) Before passing any such sentence the judge may, if he thinks fit, hear evidence to enable him to determine whether or not any person so convicted should be declared an habitual criminal.

5—(1) Where any person, apparently of the age of Seventeen years or upwards, is convicted on information filed in the Supreme Court, of any offence (whether such person has been previously convicted on information so filed of any offence or not) the judge of the Supreme Court, before whom such person is convicted, may, if he thinks fit, having regard to the antecedents, character, associates, age, health or mental condition of the person convicted, the nature of the offence, or any special circumstances of the case—

- i. Direct as part of his sentence that, on the expiration of the term of imprisonment then imposed upon him, he be detained during the Governor's pleasure in a reformatory prison : or
- ii. Without imposing any term of imprisonment upon him, sentence him to be forthwith committed to a reformatory prison, and to be there detained during the Governor's pleasure.

(2) Before passing any such sentence the judge may, if he thinks fit, hear evidence to enable him to determine whether or not such person should be so detained.

6—(1) Where any person apparently of the age of Seventeen years or upwards—

- i. Is convicted by a court of petty sessions consisting of Two or more justices, or a police magistrate, of any offence under Part III. of "The Police Act, 1905," and sentenced to a term of imprisonment of not less than Three months : and
- ii. Has been previously convicted on at least Two occasions—
 - (a) Of any offence or offences (whether of the same description of offence or not) under Part III. of the said Act, or any corresponding provision previously in force : or
 - (b) On information filed in the Supreme Court of any offence or offences (whether of the same description of offence or not)—

such court of petty sessions may by order in the prescribed form, direct that such person shall, before the completion of such term of imprisonment, be brought up at some sittings of the Supreme Court

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to be named in such order in the place nearest or most convenient (having regard to time) to the place where such court of petty sessions is then held, or to the gaol to which such person is committed, or to which he may in due course be removed, before the judge of the Supreme Court to be dealt with under the provisions of this Act as to indeterminate sentences. A.D. 1921.

(2)—i. Such person shall, by virtue of such order and without any writ of *habeas corpus* or other writ, be brought up before the judge accordingly :

ii. Every person brought up under any such order shall be deemed to be in the legal custody of the police constable gaoler or officer having the temporary charge of such person and acting under such order who shall in due course return such person into the custody from which he was so brought up.

(3) The judge of the Supreme Court before whom such person is brought up, to be dealt with under the provisions of this Act as to indeterminate sentences— Power to judge to award indeterminate sentence.

i. Upon proof of the conviction and sentence by the Court of Petty Sessions and of such previous convictions : and

ii. After hearing such evidence, if any, as he thinks desirable -- may by order direct that on the expiration of the term of imprisonment imposed by the Court of Petty Sessions such person be detained during the Governor's pleasure in a reformatory prison.

(4) No authority, other than such order, shall be necessary to warrant the detention of any such person in a reformatory prison.

(5) The judges of the Supreme Court may make rules for carrying the purposes of this section into effect and for regulating the times, form, and mode of procedure, and generally the practice to be observed in matters to which this section relates. Judges may make rules.

7 The provisions of this Act with regard to previous convictions shall apply, whether such previous convictions took place in Tasmania, or elsewhere than in Tasmania, and whether before or after the commencement of this Act. Previous convictions. Cf. *ibid.*, s. 517.

8—(1) Where at or after the commencement of this Act, any person apparently of the age of Seventeen years or upwards, and not being a person sentenced under the provisions of this Act as to indeterminate sentences, is confined in any gaol under sentence of imprisonment, it shall be the duty of the Sheriff to consult with the Indeterminate Sentences Board, appointed as hereinafter provided, as to whether it is desirable that such person should be transferred to a reformatory prison. Power to transfer persons from gaol to reformatory prison. Cf. *ibid.*, s. 518

(2) If the Sheriff and the Board concur that such person should be so transferred, the Board may report to that effect to the Minister, accompanying the report with a full record of such person and a statement in writing of the reasons for so reporting.

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(3) The Minister shall lay such report, record, and statement before the Governor, who may, if he thinks fit upon consideration thereof, direct by Order in Council that such person be transferred to a reformatory prison; and, unless such person is transferred back to gaol under the provisions of this Act, such order shall operate as a remission of the residue of his sentence of imprisonment.

Power to transfer such persons back to gaol.
Cf. *ibid.*, s. 519.

9—(1) Where the behaviour of any person so transferred from a gaol to a reformatory prison is, in the opinion of the Board, such as to be injurious to the discipline of the reformatory prison, or to the persons detained therein, the Board may report to the Minister to that effect.

(2) The Minister shall lay such report before the Governor, who may, if he thinks fit upon consideration thereof, direct by Order in Council that such person be transferred back to any specified gaol.

(3) Thereupon such person shall be removed to such gaol, and shall, pursuant to the original authority under which he was imprisoned, serve the unexpired residue of his sentence; and the time spent in the reformatory prison shall not be reckoned as time served under the sentence.

Effect of Order in Council as to transfer and detention.
Ibid., s. 520.

10 Where any such Order in Council is made, directing that any person be transferred from a gaol to a reformatory prison, or from a reformatory prison to a gaol, no authority other than such Order in Council, or a copy thereof, purporting to be signed and certified as a true copy by the officer to whose custody the original is entrusted, shall be necessary to warrant such transfer or the detention of such person.

Limitation of time for detention of persons transferred from gaol to reformatory prison.
Ibid., s. 521.

11 No person, transferred from a gaol to a reformatory prison under the provisions of this Act, shall be detained in such reformatory prison for any longer period than the unexpired residue of his sentence.

Indeterminate sentence not to apply to certain offences.
Ibid., s. 522.

12 Notwithstanding anything contained in this Act, the provisions as to indeterminate sentences of this Act, with respect to sentencing persons to be detained in a reformatory prison or with respect to the transfer of persons from a gaol to a reformatory prison, shall not apply to persons convicted of any offence punishable by death or by imprisonment for life.

Power to set apart reformatory prisons.
Cf. *ibid.*, s. 523.

13—(1) The Governor may by proclamation—

- i. Set apart any gaol or part thereof, or other suitable place, to be a reformatory prison under the provisions of this Act as to indeterminate sentences: or
- ii. Set apart any reformatory prison, or any part thereof, for the detention of habitual criminals or persons of any prescribed class.

Application of "Prison Act, 1868" (32 Vict. No. 11).

(2) Every reformatory prison shall, subject to this Act, be deemed to be a gaol within the meaning of "The Prison Act, 1868."

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14 Subject to the provisions of this Act, every person detained in a reformatory prison shall be so detained during the Governor's pleasure.

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15—(1) Every person detained in a reformatory prison shall, subject to the regulations, work at some trade or vocation or be employed in some labour.

Detention of persons in reformatory prisons. *Ibid.*, s. 524.

(2) Wages, according to the scale prescribed by regulations for the class of work or labour in which any such person is employed, shall from time to time be credited to such person in an account to be kept in the reformatory prison in which he is detained, and the amount from time to time standing to his credit in such account shall be applied, during the period of his detention, wholly or in part, as directed by the Sheriff, towards the maintenance of his wife and children (if any) or of any person dependent upon him, and the balance (if any), standing to his credit on his ceasing to be so detained, shall be paid over to him.

Persons detained to be required to work. Cf. *ibid.*, s. 525.

16 When the Governor after consideration of the recommendation of the Board determines that any person detained in a reformatory prison has sufficiently reformed, or that there is some other good and sufficient reason for his release, the Governor may by Order in Council direct the release of such person, on probation, in the case of any person who has been transferred from a gaol to a reformatory prison for a period not exceeding the then unexpired portion of his sentence, and in any other case for a period of Two years, and every such person shall be so released accordingly.

Conditions for release on probation. *Ibid.*, s. 526.

17 Every person so released while he remains in Tasmania shall, unless otherwise prescribed, once at least in every Three months during the said period of probation report his address and occupation to the principal officer of police at the place in which he was convicted, or at such other place as the Commissioner of Police may appoint. Such report may be made either personally or by letter signed by such person as aforesaid and posted to the principal officer of police at the appropriate place.

Person released on probation to report to police. Cf. *ibid.*, s. 527.

18—(1) Where it appears to a justice by information on oath that any person so released has at any time during the period of probation—

1. Failed to report his address and occupation at the times and in the manner required by or under this Act: or
- ii. Been associating with reputed thieves or other reputed criminals—

Provisions on persons released failing to report or associating with thieves, &c. Cf. *ibid.*, s. 528.

such justice may issue a summons under his hand requiring such person to attend before a court of petty sessions to be dealt with according to law, or may issue a warrant under his hand to apprehend such offender and bring him before a court of petty sessions to be dealt with according to law. The provisions of Sections Thirty-six and Thirty seven of "The Justices Procedure Act, 1919," shall apply to every such summons.

10 Geo. V. No. 55.

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Conditions under which persons released on probation may be recommitted.

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

i. Is proved to any such court of petty sessions to have failed, without some excuse which such court deems reasonable, to report his address and occupation at the times and in the manner required by or under this Act, or to have been so associating with reputed thieves or other reputed criminals : or

ii. Is convicted on information filed in the Supreme Court of any offence or is convicted of any offence punishable on summary conviction for which imprisonment for a period exceeding Three months may be imposed—

then, and in any of such cases, the court of petty sessions before which such proof is given, or the judge of the Supreme Court before whom, 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 recommitted to a reformatory prison during the Governor's pleasure, and he shall be so recommitted and detained accordingly, and any warrant necessary for his committal or detention may be issued accordingly.

Otherwise deemed to have suffered his original sentence. No. 2637 of 1915 (Vic.), s. 529.

Appointment of officers. *Ibid.*, s. 530. 9 Geo. V. No. 69.

19 If during the period of probation none of the events aforesaid happens, the person so released shall be deemed to have suffered in full the imprisonment and detention or the detention (as the case may be) to which he was sentenced.

20 Subject to the provisions of "The Public Service Act, 1918," the Governor may appoint for each reformatory prison for males a superintendent, and for females a matron, and such officers, attendants, and employees as may be necessary, and may remove any person so appointed.

Indeterminate Sentences Board. Cf. No. 2637 of 1915 (Vic.), s. 531.

Constitution.

21—(1) For the purposes of this Act there shall be constituted a board consisting of Three members to be called "The Indeterminate Sentences Board."

(2) The Director of Public Health shall be, *ex officio*, a member of the Board, and the Chairman thereof.

(3) The other Two members of the Board shall be appointed by the Governor

Quorum.

(4) Any Two members shall form a quorum, but the Three members of the Board shall be present when any resolution is carried recommending the release on probation of any person detained in a reformatory prison, or the transfer of any person from a goal to a reformatory prison, or from a reformatory prison to a goal.

Removal.

(5) The Governor may at any time remove any appointed member of the Board and fill up any vacancy however occurring in the office of any appointed member of the Board, and appoint a person to act temporarily as a member of the Board, during the absence of any member through illness or any cause, which in the opinion of the Governor, renders such temporary appointment necessary.

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(6) It shall be the duty of the Board—

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Duties of Board.

- i. To make careful inquiry as to whether any persons detained in any reformatory prison are sufficiently reformed to be released on probation, or whether there are any good and sufficient reasons for the release on probation of any person so detained :
- ii. To consult with the Sheriff and to make careful inquiry as to whether, pursuant to this Act, any person should be transferred from a gaol to a reformatory prison :
- iii. To make recommendations to the Governor as to the release, on probation, of any person detained in a reformatory prison, or, with the concurrence of the Sheriff, as to any such transfer setting forth in each case the reasons for the recommendations :
- iv. In making any recommendations 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 :
- v. To report to the Governor as to any matters on which the Governor may desire a report with regard to any such release on probation, or the transfer of any person from gaol to a reformatory prison, or from a reformatory prison to gaol :

(7) On or before the Thirtieth day of September in each year the Board shall report to the Minister as to—

Board to report to Minister.

- i. The operations of the Board up to the preceding Thirtieth day of June :
- ii. The number of persons detained, transferred, released, on probation, or recommitted during the period covered by the report : and
- iii. Generally as to the operation and effect of this Act and the regulations.

(8) The Board shall execute all such other powers and duties as may be conferred on it by any Act or by the Governor.

General powers and duties.

22 The Governor may make regulations—

- i. For the conduct, management, control, inspection, and supervision of reformatory prisons :
- ii. For the good order, discipline, employment, and health of persons detained therein :
- iii. Prescribing the trades, vocations, or classes of work at which persons detained in reformatory prisons are to be employed :
- iv. Prescribing scales of wages for the several classes of work or labour in which persons detained in reformatory prisons may be employed :

Regulations.
Cf. *ibid.*, s. 541.

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32 Vict. No. 11.

- v. Empowering a visiting justice for any breach of prison discipline by any person detained in a reformatory prison, to impose a fine not exceeding Twenty shillings upon such person, to be deducted from any sum at any time standing to the credit of such person in the account kept in the reformatory prison, in addition to or substitution for any other punishment which a visiting justice is empowered to inflict under "The Prisons Act, 1868":
- vi. Prescribing what classes of persons may be detained in reformatory prisons:
- vii. Prescribing such matters incidental to the appointment, resignation, and removal of members of the Board, and to the performance of the duties of the Board, and the regulation of its proceedings as may be necessary or convenient:
- viii. Prescribing forms to be used under this Act:
- ix. Prescribing all matters necessary or convenient to be prescribed for carrying out, or giving effect to, the provisions of this Act.

Royal
prerogative of
mercy.
No. 2637 of 1915
(Vic.), s. 543.

23 Nothing in this Act shall, in any manner, affect His Majesty's royal prerogative of mercy.