

New Zealand.



ANALYSIS.

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1910, No. 15.

AN ACT to amend the Crimes Act, 1908.

[25th October, 1910.]

Title

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) This Act may be cited as the Crimes Amendment Act, 1910, and shall be read together with and deemed part of the Crimes Act, 1908 (hereinafter referred to as the principal Act). Short Title and commencement.

(2.) This Act shall come into operation on the first day of January, nineteen hundred and eleven.

2. In this Act, unless a contrary intention appears,—

“Board” means the Prisons Board established by this Act:

“Habitual criminal” means a person declared an habitual criminal under section twenty-nine of the principal Act, or under the corresponding provisions of the Habitual Criminals and Offenders Act, 1906: Interpretation.

“ Habitual offender ” means a person declared an habitual offender under section thirty of the principal Act, or under the corresponding provisions of the Habitual Criminals and Offenders Act, 1906.

Sentence for indictable offence may include reformatory detention.

3. When any person is after the commencement of this Act convicted on indictment of any offence committed either before or after the commencement of this Act and punishable by imprisonment, or is after the commencement of this Act committed for sentence on a plea of “ Guilty ” under Part IV of the Justices of the Peace Act, 1908, in respect of any such offence, the Supreme Court or a Judge thereof before or to which or whom such person is convicted or committed for sentence may, if the said Court or Judge thinks fit, having regard to the conduct, character, associations, or mental condition of such person, the nature of the offence, or any special circumstances of the case,—

- (a.) Direct, as part of his sentence, that on the expiration of the term of imprisonment then imposed upon him he be detained in prison for reformatory purposes for any period not exceeding ten years ; or,
- (b.) Without imposing any prior term of imprisonment upon him as aforesaid, sentence him to be forthwith committed to prison, to be there detained for reformatory purposes for any period not exceeding ten years.

Summary conviction may include reformatory detention.

4. (1.) When any person is after the commencement of this Act convicted summarily before a Magistrate of any offence committed either before or after the commencement of this Act and punishable by imprisonment for more than three months, that Magistrate may, if he thinks fit, having regard to the conduct, character, associations, or mental condition of the person so convicted, the nature of the offence, or any special circumstances of the case,—

- (a.) Direct, as part of his sentence, that on the expiration of the term of imprisonment then imposed upon him he be detained in prison for reformatory purposes for any period not exceeding three years ; or,
- (b.) Without imposing any prior term of imprisonment upon him as aforesaid, sentence him to be forthwith committed to prison, to be there detained for reformatory purposes for any period not exceeding three years.

(2.) The jurisdiction conferred by this section upon a Magistrate shall not be exercised by any Justice of the Peace other than a Magistrate.

Right of appeal as from sentence of imprisonment.

5. (1.) Every person sentenced by a Magistrate to a period of reformatory detention may, at any time within fourteen days thereafter, apply *ex parte* to a Judge of the Supreme Court to review that sentence on the ground that the same is excessive or ought not to have been passed, and such Judge may thereupon either uphold or reverse the sentence or reduce the term thereof.

(2.) Nothing in this section shall in any manner affect any right of appeal against the conviction in respect of which a sentence of reformatory detention is passed.

(3.) The Governor in Council may, with the concurrence of any two or more of the Judges of the Supreme Court, make rules governing the procedure in applications for review under this section.

6. Every person so sentenced to reformatory detention for any period shall be detained in prison for that period, but subject to the provisions of this Act as to release on probation and discharge.

Nature of reformatory detention.

7. Every person who after the commencement of this Act is declared, in pursuance of the principal Act, to be an habitual criminal or an habitual offender shall, after the determination of the sentence of imprisonment passed upon him, be detained in prison under the provisions of this Act during the pleasure of the Governor.

Detention of future habitual criminals and offenders.

8. (1.) Section thirty-two of the principal Act is hereby repealed.

Repeal.

(2.) Every person who before the commencement of this Act has been declared, in pursuance of the principal Act or of the Habitual Criminals and Offenders Act, 1906, to be an habitual criminal or habitual offender shall remain subject to the provisions of section thirty-two of the principal Act in the same manner as if that section had not been repealed, save that after the commencement of this Act no habitual criminal or habitual offender shall be discharged under the provisions of that section, and save also that after the commencement of this Act every prison shall be deemed to be a reformatory prison within the meaning and for the purposes of that section.

Detention of present habitual criminals and offenders.

9. (1.) For the purposes of this Act there shall be constituted a Board to be called the Prisons Board.

Prisons Board.

(2.) The Board shall consist of not less than three nor more than seven persons.

(3.) One of those persons shall be a Judge of the Supreme Court, who shall *ex officio* be the President of the Board.

(4.) The members of the Board shall be appointed from time to time by the Governor in Council, and every person so appointed shall hold office for a period of three years, but may be reappointed.

(5.) The Governor may from time to time appoint any person to act temporarily as a member of the Board during the illness or incapacity of any member of the Board, or during the absence of any such member from any place at which a meeting of the Board is to be held. The acts of the Board shall not in any proceedings be questioned on the ground that the occasion for any such temporary appointment had not arisen or had ceased, or on the ground that any permanent member of the Board acted as such while a substitute for him so appointed remained in office.

10. (1.) Three members of the Board, of whom a Judge of the Supreme Court shall be one, shall constitute a quorum of the Board.

Meetings of Board.

(2.) Meetings of the Board shall be held at such times and places as the President or the Board determines.

(3.) Subject to this Act and to regulations made thereunder, the Board may determine its own procedure.

11. The Governor may appoint such secretaries, clerks, and other officers as he thinks necessary for the conduct of the business of the Board and the administration of this Act, and may pay the persons so appointed such salaries as he thinks fit out of moneys appropriated by Parliament in that behalf.

Appointment of officers.

Functions of Board.

12. It shall be the duty of the Board—

- (a.) To make inquiry from time to time whether there is reasonable cause for belief that any habitual criminal or habitual offender or person undergoing a sentence of reformatory detention is sufficiently reformed to be released on probation or discharged, or whether there are any other sufficient grounds for releasing him on probation or discharging him :
- (b.) To make inquiry from time to time whether there are any sufficient grounds for granting a discharge to any habitual criminal, habitual offender, or person under sentence of reformatory detention, who has been theretofore released on probation :
- (c.) After making such inquiry as aforesaid, to make recommendations to the Governor as to the release on probation or discharge of any habitual criminal, habitual offender, or person under sentence of reformatory detention, and as to the conditions (if any) which should be imposed on any such release on probation :
- (d.) At least once in every year to take into consideration, with a view to the making of any such recommendation as aforesaid, the case of every habitual criminal, habitual offender, or person serving a sentence of reformatory detention :
- (e.) To take into consideration, with a view to the making of any such recommendation, all applications for release on probation or discharge made in writing to the Board by any habitual criminal, habitual offender, or person serving a sentence of reformatory detention :
- Provided that no such application shall be made to the Board by any person within three months after the date of the hearing and determination by the Board of any former application made by the same person :
- (f.) In making any such recommendation, to have regard to the safety of the public or of any individual or class of persons, and to the welfare of the person whom it is proposed so to discharge or release on probation :
- (g.) To report to the Governor as to any matters on which he may request a report with regard to any such discharge or release on probation :
- (h.) To make in each year, not later than the thirty-first day of March, a report to the Minister of Justice as to—
- (i.) The operations of the Board during the period of twelve months ending on the thirty-first day of December last preceding :
- (ii.) The number of habitual criminals, habitual offenders, and persons under sentence of reformatory detention who have been sentenced, detained, discharged, released on probation, or recommitted during the aforesaid period :
- (iii.) The operation and effect of this Act and of the principal Act as to habitual criminals, habitual offenders, and persons sentenced to reformatory detention.

13. (1.) When the Board has, in accordance with this Act, recommended to the Governor the release of any person on probation, the Governor may, if he thinks fit, direct the release of that person accordingly.

Release on probation.

(2.) Every such release on probation shall be granted either unconditionally or on such conditions as the Governor thinks fit to impose as to the subsequent good conduct of the person so released or as to any other matters.

(3.) When the Governor has so directed the release of any person on probation, a probationary license under the hand of the Minister of Justice, or of any person or persons appointed by him in that behalf, shall be issued to that person, which shall be in such form as the Minister of Justice thinks fit, and shall set forth the conditions (if any) so imposed by the Governor, and thereupon that person shall be released from confinement.

Probationary licenses.

14. A probationary license granted under this Act may be at any time and for any reason cancelled by the Governor by warrant under his hand, whether the conditions thereof have been fulfilled or not, and thereupon the person so released may be arrested without warrant by a constable or any other person and returned to the prison from which he was released, or to any other prison.

Cancellation of such licenses.

15. If any person so released on probation commits any breach or non-observance of the conditions of his probationary license he shall be guilty of an offence punishable on summary conviction by a fine of twenty pounds or by imprisonment for three months.

Penalty for breach of conditions of probationary license.

16. If any person so released on probation is thereafter convicted of any offence and sentenced to imprisonment, and the Governor has, whether before or after that conviction, cancelled the probationary license issued to that person, he shall on the determination of his sentence of imprisonment be returned to the prison from which he was released, or to any other prison.

Further reformative detention on subsequent conviction and imprisonment.

17. No person who has been released on probation from reformatory detention shall be returned to prison under the foregoing provisions of this Act after the expiry of his sentence of reformatory detention.

Foregoing provisions not to apply after expiry of sentence of reformatory detention.

18. Every person returned to prison under the foregoing provisions of this Act shall, subject to this Act, be detained during the Governor's pleasure, but in the case of a person under sentence of reformatory detention he shall not be so detained after the expiry of that sentence.

Detention upon return to prison of person on probation.

19. For the purpose of determining the date of expiry of any sentence of reformatory detention, every period during which any probationary license has been in force shall be computed as part of the period of that sentence.

Term of probationary license to be deemed part of sentence.

20. When the Board has, in accordance with this Act, recommended to the Governor the discharge of any habitual criminal, habitual offender, or person under sentence of reformatory detention, the Governor may, if he thinks fit, direct the discharge of that person accordingly; and thereupon the declaration that he is an habitual criminal or habitual offender, or the sentence of reformatory detention, as the case may be, shall cease to be in force.

Discharge of habitual criminals, &c.

Person may be declared an habitual criminal, &c., notwithstanding former declaration to same effect.

21. If any habitual criminal, habitual offender, or person under sentence of reformatory detention is convicted of any offence, he may be declared an habitual criminal or habitual offender, or sentenced to a period of reformatory detention, in the same manner and in the same cases as if no such previous declaration or sentence had been made or given, and the previous declaration or sentence shall thereupon be deemed to be cancelled and determined.

Effect of cumulative sentences of imprisonment.

22. If any habitual criminal, habitual offender, or person under sentence of reformatory detention is at any time before the determination of his sentence of imprisonment sentenced to any term of imprisonment for any other offence, the period of his detention as an habitual criminal or habitual offender, or the period of his reformatory detention, as the case may be, shall not commence until the expiration of every sentence of imprisonment so passed upon him.

Reformatory detention to be deemed imprisonment for certain purposes.

23. (1.) Save so far as provided in this Act, reformatory detention and the detention of an habitual criminal or habitual offender shall be deemed to be imprisonment with hard labour within the meaning of the principal Act, the Prisons Act, 1908, and all other Acts referring or relating to imprisonment.

(2.) Reformatory detention and the detention of an habitual criminal or an habitual offender shall not be deemed to be imprisonment within the meaning of any statutory provision relating to the maximum periods of imprisonment for any offence.

(3.) Except so far as provided by regulations made under this Act, the provisions of the Prisons Act, 1908, and of the regulations made thereunder as to the remission of sentences by marks obtained for good conduct shall have no application to any period of reformatory detention to which any person is sentenced under this Act.

Person detained in prison under this Act to be deemed a convict.

24. Every person declared to be an habitual criminal or habitual offender, whether before or after the commencement of this Act, and every person sentenced to reformatory detention for any period, shall, while the declaration remains in force or the sentence of reformatory detention remains unexpired, be deemed to be a convict within the meaning and for the purposes of Part III of the Prisons Act, 1908 (relating to the administration of convicts' property):

Provided that so long as any probationary license under this Act, or any order of discharge granted under section thirty-two of the principal Act before the commencement of this Act, remains in force with respect to any such person he shall be deemed to have ceased to be subject to Part III of the Prisons Act, 1908.

Determination of sentence of imprisonment.

25. For the purposes of this Act a sentence of imprisonment shall be deemed to have determined so soon as the person so sentenced would have been entitled to have been set at liberty had he not been declared an habitual criminal or habitual offender or sentenced to reformatory detention.

Wages for labour to be credited and applied.

26. (1.) Persons undergoing any sentence, whether of imprisonment or of reformatory detention, shall be employed in such labour as is prescribed by regulations under this Act or directed by the Minister of Justice.

(2.) Wages according to the scale prescribed by regulations under this Act for the class of labour in which any such person is

employed may (subject to such regulations) from time to time be credited to him in an account to be kept by the Gaoler of the prison, and the amount from time to time standing to his credit shall be applied wholly or in part, as directed by the Minister of Justice, towards maintaining the wife and children (if any) of the prisoner during the period of his imprisonment or detention, and the balance (if any) standing to his credit on his release on probation or discharge shall thereupon be paid to him, either in a lump sum or by such instalments as the Minister of Justice directs.

(3.) All moneys so payable shall be paid out of the Consolidated Fund without further appropriation than this Act.

27. Section thirty-one and sections thirty-three to thirty-six of the principal Act are hereby repealed. **Repeal.**

28. Every person who before the commencement of this Act has been declared to be an habitual criminal or an habitual offender shall, in pursuance of that declaration, be detained in a prison under the Prisons Act, 1908, instead of in a reformatory prison under the principal Act. **Reformatory prisons abolished.**

29. The Governor in Council may from time to time make such regulations as are deemed necessary for the effective administration of this Act. **Regulations.**

30. Nothing in this Act shall be so construed as to limit or affect in any manner the Royal prerogative of mercy. **Royal prerogative of mercy not affected by this Act.**