

[AS REPORTED FROM THE STATUTES REVISION
COMMITTEE]

House of Representatives, 1 September 1954

Words struck out by Statutes Revision Committee
are shown in italics within bold brackets; words inserted
are shown in black.

Hon. Mr Webb

PENAL INSTITUTIONS

ANALYSIS

Title.	19. Restraint of inmates.
1. Short Title and commencement.	20. Work and earnings.
2. Interpretation.	21. Temporary release on parole for special purposes.
3. Administration of Act.	
<i>Establishment and Administration of Penal Institutions</i>	<i>Transfer and Removal of Inmates</i>
4. Establishment of penal institutions.	22. Transfer from one institution to another.
5. Inspectors of Penal Institutions.	23. Transfer of borstal inmate to prison.
6. Superintendent and other officers of penal institution.	24. Transfer of prison inmate to borstal institution.
7. Superintendent to be charged with general administration of institution.	25. Transfer to borstal institution of inmate of Child Welfare institution.
8. Protection of officers in discharge of duties.	26. Removal of inmate for judicial purposes.
9. Classification committees.	27. Removal of inmate to hospital, etc.
10. Visiting Justices.	28. Removal of inmate for educational and other purposes.
11. Power to appoint visiting committee for borstal institution.	
<i>Confinement and Treatment of Inmates</i>	<i>Length of Sentence</i>
12. Detention of short term prisoners.	29. Calculation of term of sentence.
13. Detention during transit.	30. Sentence to cease to run while offender unlawfully at large.
14. Police station deemed an institution for certain purposes.	31. Remission of part of sentence of imprisonment for good conduct.
15. Effect of warrant, etc., for specified institution.	
16. Legal custody of inmates.	<i>Offences by Inmates</i>
17. Photographing and measuring of inmate convicted or accused of offence.	32. Offences by inmates.
18. Separation of male and female inmates.	33. Powers of Visiting Justice in relation to offences by inmates.

34. Powers of Superintendent in relation to certain offences by inmates.	39. Inquests on inmates.
35. Right of appeal to Visiting Justice against decision of Superintendent.	40. Arrest of inmate unlawfully at large.
36. Effect of penalty and record thereof.	41. Possession of accommodation on termination of service of officer.
	42. Subsidies to after-care associations.
	43. Offences.
	44. Regulations.
	45. Royal prerogative not affected.
	46. Transitory provision as to administration of property.
	47. Consequential amendments.
	48. Repeals and savings.
	Schedules.

Miscellaneous

37. Right of members of Parliament to visit institutions.
38. Superintendent to deliver calendar of persons committed for trial.

A BILL INTITULED

Title.	AN ACT to consolidate and amend the Prisons Act 1908 and other enactments relating to penal institutions. BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:	5
Short Title and commencement.	1. (1) This Act may be cited as the Penal Institutions Act 1954. (2) This Act shall come into force on the <i>first</i> day of January, nineteen hundred and fifty-five.	10
Interpretation. 1908, No. 149, s. 2	2. In this Act, unless the context otherwise requires,— “ Inmate ” means any person for the time being in the legal custody of the Superintendent of any penal institution: “ Minister ” means the Minister of Justice: “ Officer ” means the Superintendent or any officer or employee of a penal institution appointed under section <i>six</i> of this Act: “ Penal institution ”, or “ institution ”, means any prison, borstal institution, detention centre, or police jail established under this Act.	15 20
Administration of Act. 1919, No. 47, ss. 2 (1), 2A 1924, No. 20, s. 3 1949, No. 51, s. 47	3. (1) Subject to the control of the Minister, the Secretary for Justice shall be charged with the general administration of this Act. (2) The Secretary for Justice shall have and may exercise the powers of a Visiting Justice under subsection <i>three</i> of section <i>ten</i> of this Act: Provided that nothing in this subsection shall be construed to confer on the Secretary for Justice any of the powers of a Visiting Justice to deal with offences against discipline.	25 30

(3) Subject to the control of the Minister and to the general directions of the Secretary for Justice, any Assistant Secretary for Justice shall have and may exercise all the powers, duties, and functions of the Secretary under this Act. The fact that any Assistant Secretary for Justice exercises any such power, duty, or function as aforesaid shall be conclusive evidence of his authority to do so.

Establishment and Administration of Penal Institutions

10 4. (1) The Minister may from time to time, by notice in the *Gazette*, declare any land or building or any part of any land or building to be any one or more of the following kinds of penal institution, namely:

Establishment of penal institutions. 1908, No. 149, s. 4
1924, No. 20, s. 4

- 15 (a) A prison:
- (b) A borstal institution:
- (c) A detention centre:
- (d) A police jail.

(2) The Minister may from time to time in like manner declare any land or building or any part of any land or building to be added to or excluded from any such penal institution as aforesaid.

(3) Any such notice as aforesaid may be in like manner revoked at any time.

25 (4) Every notice under this section shall take effect from the date thereof or from such other date as may be specified therein.

5. (1) There may from time to time be appointed under the Public Service Act 1912 such Inspectors of Penal Institutions as may be required.

30 (2) The Inspectors of Penal Institutions shall from time to time, in pursuance of the directions of the Secretary for Justice, visit and inspect all penal institutions and report thereon to the Secretary, and shall perform such other duties as they are called upon to perform by this Act or by the Secretary.

Inspectors of Penal Institutions. 1919, No. 47, ss. 3, 5 (1)
See Reprint of Statutes, Vol. VII, p. 522

(3) Every Inspector shall have and may exercise in respect of every institution the powers of a Visiting Justice under subsection *three* of section *ten* of this Act:

40 Provided that nothing in this subsection shall be construed to confer on any Inspector any of the powers of a Visiting Justice to deal with offences against discipline.

Superintendent
and other
officers of penal
institution.
1908, No. 149,
ss. 5, 6
1924, No. 20,
s. 6
See Reprint
of Statutes,
Vol. VII,
522

1947, No. 57

Superintendent
to be charged
with general
administration
of institution.
1908, No. 149,
s. 38

6. (1) To every institution, not being a police jail, there shall from time to time be appointed under the Public Service Act 1912 a Superintendent and such other officers and employees as may be required. 5
- (2) The Minister may from time to time appoint to any institution such persons as may be required as chaplains, welfare officers, education officers, or other officers in part-time capacities. 5
- (3) For every institution there shall be a medical officer, who shall be a medical practitioner and who may be appointed under subsection *one* or under subsection *two* of this section. 10
- (4) With respect to every person appointed under subsection *two* of this section, the following provisions shall apply: 15
- (a) He shall not by virtue of that appointment become an officer of the Public Service, and nothing in the Public Service Act 1912 or the Superannuation Act 1947 shall apply to the appointment: 20
- (b) He may be paid out of money appropriated by Parliament for the purpose such remuneration by way of salary or fees and such allowances as may be determined by the Minister, with the concurrence of the Minister of Finance: 25
- (c) The appointment may be held in conjunction with any office or appointment that is not deemed inconsistent therewith.
- (5) The Commissioner of Police may from time to time appoint any member of the Police Force to be the Superintendent or any other officer of any police jail. 30
- (6) In every institution in which women or girls are received there shall be a sufficient number of female officers. 30
7. (1) Subject to the provisions of this Act and to the control of the Secretary for Justice, every Superintendent of an institution shall be charged with the general administration of the institution, and, with the prior approval in writing of the Secretary for Justice, may make rules, not inconsistent with this Act or with any regulations thereunder, for the management of the institution and for the conduct and safe custody of the inmates. 35 40

(2) The powers conferred on Superintendents by this Act may, to the extent authorized by any regulations made under this Act and subject to the provisions of any such regulations, be exercised by any other officer.

5 (3) All references in any enactment or in any instrument, notice, or other document whatsoever to a gaoler shall be deemed to be references to a Superintendent, unless the context otherwise requires.

10 8. Every officer of an institution, while acting as such, shall have all the powers, authority, protection, and privileges of a constable.

Protection of officers in discharge of duties.

1919, No. 47, s. 9

Cf. Prison Act 1952 (15 & 16 Geo. VI and 1 Eliz. II, ch. 52), s. 8 (U.K.)

9. (1) The Minister may from time to time appoint such persons as he thinks fit to be a classification committee for any institution.

Classification committees.

15 (2) The function of every classification committee shall be to consider the case of any inmate of the institution whose name is referred to the committee by the Superintendent and to report to the Secretary for Justice on the training and treatment required for that inmate.

20 10. (1) Every Magistrate shall, without further appointment than this section, be a Visiting Justice for every institution under this Act.

Visiting Justices. 1908, No. 149, s. 17

25 (2) The Minister may from time to time appoint a Justice or Justices of the Peace to be a Visiting Justice or Visiting Justices for any specified institution.

(3) In respect of the institution for which he is appointed, every Visiting Justice shall have the following powers and functions, namely:

30 (a) To visit and inspect the institution from time to time and, in his discretion, to interview any inmate:

(b) To examine into the treatment and conduct of inmates:

35 (c) To hear any complaint made to him by any inmate:

- (d) To inquire into all abuses or alleged abuses within the institution or in connection with it:
- (e) To inquire into any matter referred to him by the Secretary for Justice:
- (f) For any of the purposes of this section, to take evidence on oath or otherwise: 5
- (g) To report in writing to the Secretary for Justice on any of the aforesaid matters, or any other matters relating to the institution, as often as the Visiting Justice thinks fit, and whenever he is requested to do so by the Secretary for Justice. 10

(4) Every Visiting Justice shall also have power to deal with offences against discipline in accordance with this Act. 15

Power to appoint visiting committee for borstal institution. 1924, No. 20, s. 20 (a)

11. (1) The Minister may from time to time appoint two or more persons to be a visiting committee for any borstal institution, of whom one shall be appointed as Chairman.

(2) Every visiting committee shall have such powers and functions as may be prescribed by regulations made under this Act. 20

Confinement and Treatment of Inmates

Detention of short term prisoners. 1908, No. 149, s. 4 (d) 1917, No. 28, s. 17 (2)

12. (1) Any person sentenced to imprisonment for one month or less, or committed to prison or otherwise liable to be detained in custody for one month or less, may be detained in a police jail for that period or any part thereof. 25

(2) Any person sentenced to imprisonment for eight days or less, or committed to prison or otherwise liable to be detained in custody for eight days or less, may be detained in a police station for that period or any part thereof. 30

Detention during transit. 1917, No. 28, s. 17 (1)

13. While any inmate or other person in custody is being taken to or from any institution, he may be detained in any other institution or in a police station. 35

Police station deemed an institution for certain purposes. 1917, No. 28, s. 17

14. While any person is detained in a police station pursuant to section *twelve* or section *thirteen* of this Act, the police station shall be deemed to be an institution, and the member of the Police Force in charge of the station shall be deemed to be the Superintendent thereof, within the meaning of this Act. 40

15 (1) Any warrant, writ, order, direction, or authority issued or given, whether before or after the commencement of this Act, for the detention of any person in any specified institution shall be sufficient authority for the reception and detention of that person in any other institution to which he might have been committed under his sentence.

Effect of warrant, etc., for specified institution.
1908, No. 149, s. 37
1939, No. 11, s. 18
Cf. Prison Act 1952 (U.K.), s. 12 (3)

10 (2) Any warrant, writ, order, direction, or authority addressed to the Superintendent of an institution and identifying the institution by reference to its situation or by any other sufficient description shall not be invalidated by reason only that the institution is usually known by a different description.

15 (1) The Superintendent of an institution shall have the legal custody of every person lawfully detained in the institution.

Legal custody of inmates.
1908, No. 149, s. 40 (1)
Cf. Prison Act 1952 (U.K.), s. 13

20 (2) Such legal custody as aforesaid shall commence as soon as the inmate is received within the institution or into the custody of any officer of the institution, and shall continue while the inmate is confined in the institution, or is employed beyond the precincts of the institution, or is for any reason outside it in the custody or under the control or supervision of any such officer or of any probation officer or other person pursuant to this Act.

25 (3) Where any inmate is for any reason outside the institution in the custody or under the control or supervision of any probation officer or any other person pursuant to this Act, that probation officer or other person shall have the powers of an officer to give any lawful order to the inmate, and shall be deemed to be an officer for the purposes of the following provisions of this Act, namely:

- (a) Section *eight* (which relates to the protection of officers in the discharge of their duties):
 - 35 (b) Section *thirty-two* (which relates to offences against discipline by inmates):
 - (c) Section *forty* (which relates to the arrest of inmates unlawfully at large).
- 40 (4) Where owing to the illness or incapacity of the officer or person having the custody or control or supervision of any inmate outside the institution, or for any

other reason, that custody or control or supervision ceases, the inmate shall return to the institution forthwith. If he fails so to return he shall be deemed to have escaped from lawful custody and to be unlawfully at large, and shall be liable accordingly. 5

Photographing
and measuring
of inmate
convicted or
accused of
offence.
1912, No. 6,
s. 2

17. (1) Subject to the provisions of any regulations made under this Act, any inmate of an institution, being a person convicted or accused of an offence, may, by direction of the Superintendent, be photographed and have his measurements and fingerprints taken; and if necessary reasonable force may be used by any officer of the institution to compel the inmate to submit to the taking of photographs, measurements, or fingerprints. 10

(2) Where the inmate is a person accused of an offence and is subsequently acquitted, all photographs, including the negatives, and fingerprints taken during his detention in respect of the charge of that offence shall be forthwith destroyed by the Superintendent. 15

Separation of
male and
female inmates.
1908, No. 149,
s. 10

18. In every institution used for the detention of both men and women, separate buildings or parts of a building shall be used for each. 20

Restraint of
inmates.
1908, No. 149,
ss. 28, 29

19. (1) No inmate shall be placed under mechanical restraint except in case of necessity; and the particulars of every such case shall be recorded and notice of it given forthwith to a Visiting Justice. 25

(2) No inmate shall be kept under mechanical restraint for more than twenty-four hours except pursuant to an order in writing signed by a Visiting Justice specifying the necessity for the restraint and the time during which the inmate is to be so kept. 30

(3) Nothing in this section shall apply to any inmate who is being escorted to or from an institution.

Work and
earnings.
1908, No. 149,
s. 8 (k)
1910, No. 15,
s. 26
1920, No. 15,
s. 12 (1)
1924, No. 20,
s. 17 (1), (2),
(4)

20. (1) Subject to the provisions of any regulations made under this Act, every inmate, not being a person only awaiting trial or on remand, shall be employed in such work as is directed by the Superintendent of the institution, and may be so employed beyond the precincts of the institution in which he is detained. 35

(2) Subject as aforesaid, any inmate detained only by reason of the fact that he is awaiting trial or is on remand may be employed under this section if he so requests. 40

(3) Earnings at such rate or rates as may from time to time be approved by the Minister, with the concurrence of the Minister of Finance, may be credited to every inmate employed under this section, and may be applied or paid in accordance with regulations made under this Act.

(4) All sums payable to the credit of an inmate under this section shall be paid out of money appropriated by Parliament for the purpose.

21. (1) The Minister may from time to time, subject to such conditions and restrictions as he thinks fit, authorize the Secretary for Justice, in special circumstances, to direct the temporary release on parole of any inmate for such period or periods, and subject to such conditions (if any), as the Secretary thinks fit. Any authority given by the Minister under this section may be given either generally or in respect of cases of any specified class or in respect of any particular case.

Temporary release on parole for special purposes. Cf. Prison Act 1952 (U.K.), ss. 47 (5), 49 (4)

(2) The Secretary may at any time direct the return to an institution of any person released on parole under this section.

(3) Every person released on parole under this section shall be deemed to be unlawfully at large if he is at large after the expiry of the period for which he was so released or after the giving of a direction for his return to an institution as aforesaid.

(4) Every person released on parole under this section shall be deemed to have escaped from lawful custody, and shall be liable accordingly, if he is at large after the expiry of the period for which he was so released.

Transfer and Removal of Inmates

22. Subject to the provisions of any regulations made under this Act, any inmate may from time to time be transferred, on the direction of the Secretary for Justice or of an Inspector of Penal Institutions, from any institution to any other institution in which he may be lawfully detained.

Transfer from one institution to another. 1908, No. 149, s. 47. 1919, No. 47, s. 6

23. (1) Where the Minister is satisfied, on the recommendation of the Secretary for Justice or of a visiting committee made after inquiry, that an inmate of a borstal institution is incorrigible or is exercising a bad influence on the other inmates of the institution, or

Transfer of borstal inmate to prison. 1924, No. 20, s. 11

that it would be in the interests of the inmate to be transferred to a prison, the Minister may direct that the inmate be transferred to a prison. Any such direction shall be sufficient authority for the reception and detention of the inmate in a prison. 5

(2) Any inmate so transferred shall, while detained in a prison, be treated as an inmate of a prison:

Provided that he shall continue to be subject to the same provisions relating to length of sentence, release, and subsequent supervision as apply to persons sentenced to borstal training. 10

(3) The Minister may at any time direct that any inmate transferred to a prison under this section be transferred back to a borstal institution.

Transfer of
prison inmate
to borstal
institution.
1924, No. 20,
s. 12

24. (1) Where the Minister is satisfied that any inmate of a prison who is under twenty-three years of age might with advantage be detained in a borstal institution, he may direct that the inmate be transferred to a borstal institution. Any such direction shall be sufficient authority for the reception and detention of the inmate in a borstal institution. 15 20

(2) Any inmate so transferred shall, while detained in a borstal institution, be treated as an inmate of a borstal institution:

Provided that he shall continue to be subject to the same provisions relating to length of sentence, release, and subsequent supervision as applied to him before the transfer. 25

(3) The Minister may at any time direct that any inmate transferred to a borstal institution under this section be transferred back to a prison. 30

Transfer to
borstal
institution
of inmate
of Child
Welfare
institution.
1924, No. 20,
s. 13
See Reprint
of Statutes,
Vol. III,
p. 1091

25. (1) Whenever the Minister of Education is satisfied that any person who is detained in an institution under the Child Welfare Act 1925 after having been found guilty of an offence punishable by imprisonment, and who is not less than fifteen and is under twenty-one years of age, is unsuitable for detention in that institution and might with advantage be detained in a borstal institution, he may, with the approval of the Minister of Justice, direct that that person be transferred to a borstal institution. Any such direction shall be sufficient authority for the reception and detention of that person in a borstal institution. 35 40

(2) Any person so transferred shall, while detained in a borstal institution, be treated as an inmate of a borstal institution:

5 Provided that for the purposes of his discharge he shall be deemed to continue to be an inmate within the meaning of the Child Welfare Act 1925 and shall not be subject to the provisions of any enactment relating to the release and subsequent supervision of persons sentenced to borstal training.

See Reprint
of Statutes,
Vol. III,
p. 1091

10 (3) Every person transferred to a borstal institution under this section shall, unless he is sooner discharged under the Child Welfare Act 1925 or transferred back under subsection *four* of this section, be returned to an institution under that Act at the end of one year from
15 the date on which he was received in the borstal institution.

(4) The [*Minister of Education or the*] Minister of Justice may at any time, with the approval of the
20 **Minister of Education**, direct that any person detained in a borstal institution under this section be transferred back to an institution under the Child Welfare Act 1925.

(5) Any person transferred to a borstal institution under this section and returned or transferred back as
25 a borstal institution pursuant to subsection *one* of this section, and in each such case the provisions of this section shall apply:

30 Provided that in any such case the periods of detention of that person in any borstal institution or institutions shall not in the aggregate exceed three years.

26. (1) Any inmate may be brought up for trial or sentence, and may be removed by or under the direction of the Superintendent from one institution to another or from one place of confinement to another for the purpose
35 of being tried or of being sentenced or of undergoing his sentence.

Removal of
inmate for
judicial
purposes.
1908, No. 32,
s. 416
1908, No. 149,
ss. 42, 43
1908, No. 56,
ss. 24, 25

(2) Where—

(a) Any inmate is charged with an offence, not being the offence for which he is in custody; or

(b) In any other case the interests of justice require the attendance of any inmate before a Court as a party or witness, or his attendance at an inquest as a witness,—

any Court, Judge, or Magistrate may, by order in writing, direct the Superintendent of the institution in which the inmate is detained to bring him or cause him to be brought before the Court or, as the case may require, before the Coroner, as often as may be necessary; and the Superintendent shall obey the order. 5 10

(3) The Court, Judge, or Magistrate making any order under subsection *two* of this section shall if the order is made in a civil proceeding, and may if it is made in any other proceeding, require any person applying for the order to deposit a sum sufficient to pay the expenses of bringing the inmate before the Court or Coroner and returning him to the institution in which he is required by law to be detained, including the expenses of his maintenance and custody from the time he leaves the institution until the time he is so returned. 15 20

Removal of inmate to hospital, etc. 1908, No. 149, s. 46 1915, No. 52

27. (1) Where it appears that any inmate requires medical, surgical, or dental treatment, he may from time to time, as the case may require, be removed by or under the direction of the Superintendent to a hospital or other suitable place for the purpose of treatment, and may in like manner be taken back to the institution. 25

(2) In any such case, the inmate shall be deemed to continue to be in the legal custody of the Superintendent while he is absent from the institution.

Removal of inmate for educational and other purposes.

28. (1) Any inmate may from time to time be removed from and returned to the institution in the custody or under the control or supervision of an officer of the institution, or of a probation officer or other person approved by the Superintendent for the purposes of this section, for any educational, recreational, or other purpose approved by the Minister. 30 35

(2) Any approval given by the Minister under this section may be given generally in respect of specified educational, recreational, or other purposes or specially in respect of any such purpose. 40

Length of Sentence

29. (1) Except as provided in this section, the term of every sentence shall commence on the day on which the sentence is passed.

Calculation of term of sentence.
1908, No. 149, ss. 34, 35

5 (2) If the offender is not present at the Court when the sentence is passed, or if the Court suspends execution of the sentence, the term of the sentence shall commence on the day on which he is arrested to serve the sentence.

10 (3) A term of imprisonment imposed in default of payment of any sum of money shall commence on the day on which the person liable to that imprisonment is arrested to serve the term.

15 (4) If the sentence is cumulative on any other sentence, the term shall commence when the offender ceases to be liable to be detained under that other sentence:

Provided that where any sentence on which any other sentence is cumulative is quashed on appeal or is otherwise set aside, and no cumulative sentence is substituted therefor, that other sentence shall commence when the first-mentioned sentence would have commenced.

20 (5) Except in the case of a sentence for a term of three days or less, whenever an inmate is due to be discharged or released on a Saturday or a Sunday, or on Christmas Day, Good Friday, or Anzac Day, he shall be discharged or released, as the case may require, on the nearest preceding day that is not one of those days.

30 30. Where any inmate escapes from lawful custody or is otherwise unlawfully at large, any time during which he is unlawfully at large shall not count as part of the period for which he was liable to be detained when he became an inmate, and for the purpose of calculating that period his detention shall be deemed to be resumed on the day on which he is again received within an institution or into the custody of an officer of the institution.

Sentence to cease to run while offender unlawfully at large.
Cf. Prison Act 1952 (U.K.), s. 49 (2), (3)

35 40 31. (1) The [Governor-General may at any time, on the recommendation of the Minister] Minister may at any time grant to any person serving a sentence of imprisonment, not being a sentence of life imprisonment, remission of any part of his sentence, not exceeding one-fourth of the term thereof, on the ground of his good conduct and industry.

Remission of part of sentence of imprisonment for good conduct.
Cf. Prison Act 1952 (U.K.), s. 25 (1), (7)

- (2) For the purposes of this section,—
- (a) A person who is committed to prison in default of payment of any sum of money shall be treated as an inmate serving a sentence of imprisonment for the term for which he is committed: 5
- (b) Cumulative terms of imprisonment shall be treated as one term.

Offences by Inmates

Offences by
inmates.
1908, No. 149,
ss. 25, 26

32. (1) Every inmate commits an offence against discipline who— 10
- (a) Disobeys any lawful order of any officer, or disobeys or fails to comply with any regulation made under this Act or any rule of the institution made under section *seven* of this Act: 15
- (b) Is idle, careless, or negligent at work, refuses to work, or wilfully mismanages his work:
- (c) Uses or writes any abusive, insolent, insulting, threatening, profane, indecent, or obscene words: 20
- (d) Behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner:
- (e) Without authority, communicates with any person, not being an inmate or an officer or any other person lawfully in the institution: 25
- (f) Leaves his cell or place of work or other appointed place without permission:
- (g) Without the approval of an officer, has any article in his cell or in his possession, or gives to or receives from any person any article, or attempts to obtain any article: 30
- (h) Repeatedly makes groundless or frivolous complaints:
- (i) Commits any nuisance: 35
- (j) Assaults any other inmate:
- (k) Wilfully disfigures, damages, or destroys any part of the institution, or any property that is not his own:
- (l) In any other way, offends against good order and discipline. 40

(2) Every inmate commits an offence against discipline who—

- (a) Obstructs any officer in the execution of his duty:
- 5 (b) Assaults any officer or any other person, not being an inmate:
- (c) Makes false and malicious allegations against any officer, or any other inmate, or any other person lawfully in the institution:
- 10 (d) Without the permission of the Superintendent, combines with other inmates for the purpose of obtaining any alteration in conditions in the institution or of making any complaint:
- (e) Mutinies, or incites other inmates to mutiny:
- 15 (f) Escapes from any institution or from lawful custody:
- (g) Wilfully wounds or injures himself or pretends illness:
- (h) Being an inmate to whom section *seventeen* of this Act applies, refuses, after that section has been read to him, to submit to being photographed or to having his measurements or fingerprints taken:
- 20 (i) Commits any act of gross misconduct or gross insubordination.
- 25

(3) Every inmate who attempts to commit any offence against discipline, or who aids, counsels, or procures the commission of any such offence, shall be liable to be dealt with and punished in the same manner as if he had committed that offence.

30 **33.** (1) Every Visiting Justice shall have power to hear any complaint relating to any offence against discipline alleged to have been committed by any inmate, and may examine any person concerning the alleged offence, on oath or otherwise at his discretion.

Powers of Visiting Justice in relation to offences by inmates.

1908, No. 149, ss. 22, 23

(2) Every such hearing and examination shall be in the presence and hearing of the inmate charged with the offence, who shall be entitled to be heard and to cross-examine any witness.

(3) Where on any hearing under this section the Visiting Justice finds the offence proved, he may impose any one or more of the following penalties, namely:

- (a) Forfeiture, for any period not exceeding three months, of any partial remission of a sentence of imprisonment, being a remission for which the inmate has become entitled to be recommended, pursuant to any regulations made under this Act, before the hearing: 5
- (b) Forfeiture or postponement of any privilege, for any period not exceeding three months: 10
- (c) Reduction in grade, or postponement of promotion in grade, for any period not exceeding three months:
- (d) Forfeiture of earnings, for any period not exceeding three months: 15
- (e) Exclusion from work in association with other inmates, for any period not exceeding twenty-eight days:
- (f) Restricted diet, as prescribed by regulations made under this Act, for any period not exceeding fifteen days: 20
- (g) Confinement in a cell for any period not exceeding fifteen days.

(4) Where the Visiting Justice is of opinion that in the circumstances of the case the inmate should be charged before a Court with any offence under any enactment other than this Act, instead of being dealt with under this section, he may in his discretion, at any time before imposing a penalty under this section, decline to proceed with the hearing and direct that an information be laid accordingly. 25 30

Powers of Superintendent in relation to certain offences by inmates.

34. (1) The Superintendent of any institution shall have power to hear any complaint relating to any offence against discipline under subsection *one* of section *thirty-two* of this Act alleged to have been committed by any inmate of that institution, and may examine any person concerning the alleged offence, on oath or otherwise at his discretion. 35

(2) Every such hearing and examination shall be in the presence and hearing of the inmate charged with the offence, who shall be entitled to be heard and to cross-examine any witness. 40

(3) Where on any hearing under this section the Superintendent finds the offence proved, he may impose any one or more of the following penalties, namely:

- 5 (a) Forfeiture, for any period not exceeding seven days, of any partial remission of a sentence of imprisonment, being a remission for which the inmate has become entitled to be recommended, pursuant to any regulations made under this Act, before the hearing:
 - 10 (b) Forfeiture or postponement of any privilege, for any period not exceeding twenty-eight days:
 - 15 (c) Reduction in grade, or postponement of promotion in grade, for any period not exceeding twenty-eight days:
 - (d) Forfeiture of earnings, for any period not exceeding seven days:
 - 20 (e) Exclusion from work in association with other inmates, for any period not exceeding fourteen days:
 - (f) Restricted diet, as prescribed by regulations made under this Act, for any period not exceeding three days:
 - 25 (g) Confinement in a cell for any period not exceeding seven days.
- (4) The Superintendent may in his discretion, at any time before imposing a penalty under this section,—
- 30 (a) Refer the case to a Visiting Justice to be dealt with under section *thirty-three* of this Act, and thereupon the provisions of that section shall apply; or
 - 35 (b) If he is of opinion that in the circumstances of the case the inmate should be charged before a Court with any offence under any enactment other than this Act, instead of being dealt with or referred to a Visiting Justice under this section, decline to proceed with the hearing and cause an information to be laid accordingly.

Right of
appeal to
Visiting Justice
against
decision of
Superintendent.

35. (1) If any inmate charged with an offence against discipline and dealt with by the Superintendent as aforesaid is dissatisfied with any finding of the Superintendent or any penalty imposed by him, the inmate may request that his case be referred by way of appeal to a Visiting Justice; and thereupon the Superintendent shall cause the case to be brought before a Visiting Justice as soon as possible. 5

(2) If the appeal to the Visiting Justice under this section relates to any finding of the Superintendent, the Justice shall rehear the whole case, and may either reverse that finding or confirm it, and may either confirm the penalty or, if in his opinion the circumstances require it, impose in substitution therefor any penalty that could have been imposed by the Superintendent. 10 15

(3) If such appeal relates only to a penalty imposed by the Superintendent, the Justice shall consider only the question of the penalty, and may either confirm the penalty or, if in his opinion the circumstances require it, impose in substitution therefor any penalty that could have been imposed by the Superintendent. 20

(4) Where there is an appeal under this section, any penalty imposed by the Superintendent shall be deemed to be suspended until the appeal is disposed of.

Effect of
penalty and
record
thereof.
1908, No. 149,
s. 23 (2)-(4)

36. (1) No penalty imposed under any of the provisions of sections *thirty-three* to *thirty-five* of this Act shall operate to extend the detention of any inmate beyond the term for which he was originally liable to be detained. 25

(2) Any Visiting Justice or Superintendent imposing a penalty under any of the aforesaid sections shall enter and sign in a separate book, to be called the Punishment Book, a statement of the nature of any offence for which a penalty is so imposed, together with the name of the offender, the date of the offence, and particulars of the penalty. 30 35

(3) Any Visiting Justice hearing any appeal against the decision of a Superintendent shall enter and sign in the Punishment Book particulars of the appeal and of the result thereof. 40

(4) The Superintendent shall forthwith send a copy of every such entry to the Secretary for Justice.

Miscellaneous

37. Any member of Parliament may, whenever he thinks fit, enter into any institution and examine the institution and the condition of the inmates, and may
 5 enter any observations he thinks fit to make in relation to the [*prison*] institution and the management thereof in a visitors' book to be kept by the Superintendent:
 Provided that the member shall not be entitled under this section to visit any inmate under sentence of death,
 10 or to communicate with any inmate except in relation to his treatment in the institution or to a complaint that he may make in respect of such treatment.
38. The Superintendent of every institution in which there are confined any persons committed for trial before
 15 the Supreme Court shall deliver to that Court a calendar of those persons.
39. Where any inmate dies, the Superintendent shall forthwith report the death to the Coroner.
40. Any constable or any officer of an institution may
 20 arrest without warrant any person who, having been sentenced to imprisonment, corrective training, preventive detention, borstal training, or detention in a detention centre or having been committed to an institution, is unlawfully at large, and may take him to any
 25 place where he may be lawfully detained.
41. (1) Where any living accommodation is provided for an officer of any institution, or for his family, by virtue of his office, and he subsequently ceases to be an officer of the institution or dies, he, or, as the case
 30 may require, his family, shall quit the accommodation when required to do so by notice given by the Secretary for Justice.
- (2) Notwithstanding anything in any other enactment, where any such officer or the family of any such
 35 officer refuses or neglects to quit the accommodation within forty-eight hours after the giving of the notice, any two Justices, on proof made to them of the facts authorizing the giving of the notice and of the service of

Right of members of Parliament to visit institutions.
 1908, No. 149, s. 19

Superintendent to deliver calendar of persons committed for trial.
 1908, No. 149, s. 41

Inquests on inmates.
 1908, No. 149, s. 36

Arrest of inmate unlawfully at large.
 Cf. Prison Act 1952 (U.K.), s. 49 (1)

Possession of accommodation on termination of service of officer.
 1908, No. 149, s. 7
 Cf. Prison Act 1952 (U.K.), s. 11

the notice and of the refusal or neglect to comply with it, may by warrant under their hands direct any constable, within any period specified in the warrant, to enter, by force if necessary, into the accommodation and deliver possession of it to some person appointed by the Secretary for Justice or by the Superintendent of the institution to receive it. 5

Subsidies to
after-care
associations.
1924, No. 20,
ss. 18, 19

42. (1) If the Minister is satisfied that any society, whether formed before or after the commencement of this Act, has as its object or amongst its objects the care and control of persons released on probation from institutions, and approves the means adopted by the society for securing its objects, he may from time to time, with the concurrence of the Minister of Finance, approve the payment, out of money appropriated for the purpose by Parliament, of contributions towards the expenses of that society. 10 15

(2) In approving any such contribution, the Minister may impose such conditions as he thinks fit with respect to its expenditure and the accounting therefor. 20

Offences.
1908, No. 149,
ss. 30, 32, 50

43. (1) Every person commits an offence and is liable on summary conviction before a Magistrate or any two or more Justices to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds who, except under the authority of this Act or of any regulations made under this Act or the express authority of the Superintendent of an institution,— 25

(a) Brings or causes to be brought into the institution, or delivers or causes to be delivered to any inmate, any liquor, tobacco, money, or letter, or any article or thing whatsoever: 30

(b) Places or causes to be placed anywhere outside the institution any liquor, tobacco, money, or letter, or any article or thing whatsoever, with intent that it should come into the possession of an inmate: 35

(c) Takes or causes to be taken out of the institution any letter or any article or thing whatsoever on behalf of any inmate:

(d) Holds any communication with any inmate: 40

(e) Photographs any inmate:

(f) Attempts to do any of the foregoing things:

(g) Loiters about any place where inmates may be confined or employed, and refuses or neglects to depart after being warned by any constable or by any officer of an institution.

5 (2) Notwithstanding anything in subsection *one* of this section, where any officer of an institution is so convicted of an offence against any of the provisions of paragraphs (a), (b), and (c) of that subsection, or of an attempt to commit any such offence, he shall be liable
10 to imprisonment for a term not exceeding twelve months or to a fine not exceeding one hundred pounds.

(3) Any constable, or any officer of an institution, who on reasonable and probable grounds believes that any person has committed an offence against this section may
15 arrest that person without warrant.

(4) Any constable, or any officer of an institution, who has reason to suspect that there is any breach by any person of any provision of this section may seize any liquor, tobacco, money, letter, article, or thing, or any
20 photograph or photographic film, in respect of which he has reason to suspect that the breach has occurred; and for the purpose of seizing any such photographic film as aforesaid may temporarily take possession of any camera in which it is contained. Anything so seized in
25 respect of which any person is convicted of an offence under this section shall be forfeited to the Crown, unless the Court orders that it be returned to a person appearing to the Court to be entitled thereto.

44. (1) The Governor-General may from time to time, by Order in Council, make all such regulations, not inconsistent with this Act, as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

Regulations.
1908, No. 149,
ss. 8, 11, 12
1924, No. 20,
s. 20

35 (2) Without limiting the generality of the powers conferred by subsection *one* of this section, it is hereby declared that regulations may be made under this section for all or any of the following purposes, namely:

- 40 (a) Prescribing the powers and duties of officers:
(b) Ensuring the good management and government of institutions:

- (c) Ensuring the safe custody and discipline of inmates; and prescribing or regulating the classification, correction, separation, diet, instruction, treatment, mode of employment, hours of work, and earnings of inmates or of different classes of inmates, and the application or payment of such earnings: 5
- (d) Providing for the transfer of inmates to a penal grade, prescribing the circumstances in which they may be so transferred, and prescribing or regulating the treatment of inmates so transferred: 10
- (e) Regulating the photographing of inmates and the taking of their measurements and fingerprints: 15
- (f) Regulating the transfer of inmates from one institution to another:
- (g) Regulating the manner in which the good conduct and industry of inmates under sentence of imprisonment may be assessed and marked for the purposes of the partial remission of sentences, and the procedure for recommending or granting any such remission: 20
- (h) Prescribing or regulating the terms of appointment of visiting committees for borstal institutions, and prescribing their powers and functions and their procedure. 25
- (3) Any regulations under this section may be made to apply generally to all institutions or to any specified institution or to institutions of any specified class or classes; and may be made to apply generally to all inmates or to inmates of any specified class or classes. 30
- (4) All regulations under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. 35

Royal
prerogative
not affected.

45. Nothing in this Act shall be construed to limit or affect in any way the Royal prerogative of mercy. 40

46. Notwithstanding the repeal by this Act of Part III of the Prisons Act 1908 and of section thirty-seven of the Reformatory Institutions Act 1909, the provisions of the said Part III shall continue to apply in relation to every person who was subject to the operation of that Part immediately before the date of the commencement of this Act, as if his sentence or order of detention had expired on that date.
47. The enactments specified in the *First* Schedule to this Act are hereby amended in the manner indicated in that Schedule.
48. (1) The enactments specified in the *Second* Schedule to this Act are hereby repealed.
- (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

Transitory provision as to administration of property.

See Reprint of Statutes, Vol. VI, p. 984

Ibid., Vol. VIII, p. 15

Consequential amendments.

Repeals and savings.

See Reprint of Statutes, Vol. VIII, p. 568

Schedules.

SCHEDULES

Section 47

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS

Title of Act	Nature of Amendment
<p>1908, No 32— The Crimes Act 1908 (Reprint of Statutes, Vol. II, p. 224)</p>	<p>(a) By omitting from sections 141, 142, and 147 the word "prison", wherever that word appears, and substituting in each case the words "penal institution":</p> <p>(b) By omitting from paragraph (a) of section 144 the word "prison", and substituting the words "a penal institution"; and by omitting from paragraph (b) of that section the word "prison", and substituting the words "penal institution":</p> <p>(c) By omitting from paragraph (a) of section 145 the word "prison", and substituting the words "a penal institution"; and by omitting from paragraph (b) of that section the word "prison", and substituting the words "penal institution":</p> <p>(d) By repealing paragraph (a) of section 146, and substituting the following paragraph: " (a) Rescues any person lawfully detained in a penal institution, or aids any such person in escaping or in attempting to escape from a penal institution; or":</p> <p>(e) By omitting from paragraph (b) of section 146 the words "any prisoner lawfully imprisoned", and substituting the words "any person lawfully detained in a penal institution"; and by omitting from that paragraph the word "prison", and substituting the words "penal institution".</p>

FIRST SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Title of Act	Nature of Amendment
1933, No. 32— The Trustee Amendment Act 1933	By omitting from subsection (3) of section 5 the words “the administrator or interim curator of an estate appointed under Part III of the Prisons Act 1908 or under the Reformatory Institutions Act 1909”.
1951, No. 73— The Coroners Act 1951	<p>(a) By omitting from paragraph (b) of subsection (1) of section 5 the words “detained in a prison”, and substituting the words “in the legal custody of the Superintendent of a penal institution”:</p> <p>(b) By omitting from subsection (3) of section 5 the words “while detained in a borstal institution, or”.</p>
1952, No. 56— The Administration Act 1952	<p>(a) By omitting from paragraph (a) of subsection (1) of section 62 the words “and is not a convict within the meaning of section fifty-two of the Prisons Act 1908”:</p> <p>(b) By omitting from paragraph (b) of the said subsection (1) the words “is a convict within the meaning of section fifty-two of the Prisons Act 1908 or”.</p>

Section 48

SECOND SCHEDULE

ENACTMENTS REPEALED

- 1908, No. 32—
The Crimes Act 1908: Section 416. (Reprint of Statutes, Vol. II, p. 317.)
- 1908, No. 56—
The Evidence Act 1908: Sections 24 and 25. (Reprint of Statutes, Vol. III, p. 113.)
- 1908, No. 149—
The Prisons Act 1908. (Reprint of Statutes, Vol. VI, p. 966.)
- 1909, No. 30—
The Reformatory Institutions Act 1909: Section 37 and subsection (3) of section 38. (Reprint of Statutes, Vol. VIII, p. 15.)
- 1910, No. 15—
The Crimes Amendment Act 1910. (Reprint of Statutes, Vol. II, p. 335.)
- 1912, No. 6—
The Prisons Amendment Act 1912. (Reprint of Statutes, Vol. VI, p. 993.)
- 1915, No. 52—
The Prisoners Detention Act 1915. (Reprint of Statutes, Vol. VI, p. 993.)
- 1917, No. 28—
The Statute Law Amendment Act 1917: Sections 16 and 17. (Reprint of Statutes, Vol. VI, p. 995.)
- 1919, No. 47—
The Prisons Amendment Act 1919. (Reprint of Statutes, Vol. VI, p. 996.)
- 1920, No. 15—
The Crimes Amendment Act 1920: Section 12. (Reprint of Statutes, Vol. II, p. 344.)
- 1924, No. 20—
The Prevention of Crime (Borstal Institutions Establishment) Act 1924. (Reprint of Statutes, Vol. II, p. 539.)
- 1930, No. 12—
The Prevention of Crime (Borstal Institutions Establishment) Amendment Act 1930. (Reprint of Statutes, Vol. II, p. 546.)
- 1939, No. 11—
The Summary Penalties Act 1939: Section 18.
- 1949, No. 51—
The Statutes Amendment Act 1949: Section 47.