

No. 17, 1939.

the care of the Minister or committed to an institution, in whom there exists mental defectiveness so pronounced that he requires supervision and control for his own protection, or for the protection of others.

Establishment of homes.

44. (1) The Governor, by proclamation, may establish and constitute homes for the reception, detention, maintenance, education and training of mentally defective children, whose cases call for segregation and special treatment, and may by such proclamation assign any name to such home.

(2) Every such home shall be inspected once at least in every three months by an officer appointed for that purpose by the Minister. Such officer shall, after such inspection, submit to the Minister a report dealing with the matters prescribed.

Medical certificates.

45. Where the Minister is satisfied by the certificates of two medical practitioners, one of whom shall be the principal medical officer of the Department of Public Instruction or a medical officer of that Department authorised by such principal medical officer and one of whom shall be a qualified psychiatrist, after separate examination, apart from each other, that any child or young person is a mentally defective child, the Minister may order that such child or young person be admitted to a home.

Superintendent to have custody and control of inmates.

46. Any mentally defective child admitted to a home shall be in the care of the superintendent; and such mentally defective child, notwithstanding that he has attained the age of eighteen years, may be detained at such home until he is discharged in pursuance of the provisions of section forty-seven of this Act.

Discharge by Minister.

47. (1) The Minister, on being satisfied, on medical evidence or on such other evidence (if any) as he may deem necessary, that it is no longer necessary that any person who has been admitted to a home as a mentally defective child should be further detained in any home, may, by order under his hand, in the prescribed form, direct that he be discharged.

Release on license.

(2) Where the Minister is satisfied on medical evidence and on such other evidence (if any) as he may deem necessary, that any person who has been admitted to

to a home as a mentally defective child, might, in the interest of such person, be released on license, he may release such person on license subject to such conditions as may be prescribed or as he may, in any special case, think fit.

No. 17, 1939.

(3) Where the Minister is satisfied that any person released on license pursuant to subsection two of this section has failed to comply with any of the conditions specified in the license, the license may be revoked by the Minister, and the Minister may, by order under his hand in the prescribed form, direct that such person shall be detained in a home for a further period, and thereupon and without further warrant any officer or employee of the Child Welfare Department or any member of the police force may arrest such person and convey him to the home specified in the order to be there received and detained until the Minister otherwise directs.

Re-admission for breach of conditions of license.

48. The superintendent of a home, and every officer or other employee of such home authorised in writing by the superintendent, for the purpose of conveying any person who has been ordered to be admitted to a home as a mentally defective child, to or from the home, or of apprehending him and bringing him back to the home in case of his escape and refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, immunities, and privileges of a police constable.

Powers of superintendent and officers of home.

PART X.

INSTITUTIONS.

49. The Governor may, by proclamation, establish and constitute, as institutions under this Act,—

Governor may establish institutions. cf. Act No. 21, 1923, s. 16.

- (a) shelters for the reception and temporary detention and maintenance of children or young persons;
- (b) schools for the reception, detention, maintenance, discipline, education and training of children and young persons committed to such institutions,

and may assign a name to such institutions.

50.

No. 17, 1939.

Minister to have control. cf. Act No. 21, 1923, s. 17.

Order to be forwarded to superintendent.

Ibid. s. 18.

Certain orders and copies to be evidence.

50. Every such institution shall be controlled by the Minister and shall be inspected once at least in every three months by an officer appointed for that purpose by the Minister. Such officer shall, after such inspection, submit to the Minister a report dealing with the matters prescribed.

51. (1) An order committing a child or young person to an institution, duly endorsed as provided in section ninety-three of this Act, or an order made under subsection one of section ninety-four of this Act, duly endorsed as provided in that subsection, or a direction in writing signed by the Minister for the transfer of a child, young person or person from one institution to another, shall be forwarded to the superintendent and shall be sufficient warrant in respect of the child, young person or person named therein—

- (a) to convey him to the institution specified in the endorsement on the order; or
- (b) to transfer him from one institution to another in accordance with the direction of the Minister; or
- (c) to detain him in the institution specified in the endorsement on the order or specified in the direction of the Minister, as the case may be.

(2) The production of—

- (a) any such order so endorsed; or
- (b) a copy of such order so endorsed with a memorandum purporting to be signed by the superintendent of any such institution, stating that the child, young person or person named in such order was duly received into, and is at the time of signing thereof detained in such institution, or has been otherwise disposed of according to law; or
- (c) any order made under this Act, or a copy thereof purporting to be signed by the clerk of the court at which the same was made and certified by him to be a correct copy; or
- (d) a copy of any such direction of the Minister purporting to be signed by the superintendent and certified by him to be a correct copy,

shall,

shall, without proof of signature of the person purporting to have signed the same, be evidence in all courts and proceedings—

- (i) of the due making and signing of any such order, memorandum, or certificate; and
- (ii) of the committal, detention, and identity of the child, young person or person named in any such order, memorandum, or certificate; and
- (iii) of any other matters stated in such order.

52. All children, young persons or persons committed to, or inmates of, an institution shall be in the custody and under the control of the superintendent of the institution until they attain the age of eighteen years, or are discharged, transferred from the institution, apprenticed or placed-out:

Children, young persons and persons to be under control of superintendent. cf. Act No. 21, 1923, s. 19.

Provided that a child or young person committed to an institution or a person transferred to an institution shall, notwithstanding that he has attained the age of eighteen years, be detained therein until the expiration of the period, if any, named in the order of committal, or in the order directing his transfer, as the case may be, or until he is lawfully discharged, transferred from the institution, apprenticed, or placed out.

53. (1) The Minister, with respect to any child, young person or person who has been committed or transferred to or is an inmate of any institution—

Powers and duties of Minister. cf. *Ibid.* s. 20.

- (a) shall determine the particular institution in which the child, young person or person shall be placed and detained;
- (b) may transfer a child, young person or person from one institution to another;
- (c) may remove a child or young person (other than a child or young person who has been committed to an institution for a specified term) from an institution and apprentice him, board him out, place him out, or place him as an adopted boarder.

(2) No ward who has not been committed to an institution by a court shall be placed in or transferred to an institution set apart for the reception, detention, maintenance, discipline, education and training of juvenile offenders.

54.

No. 17, 1939.

Discharge
of child
or young
person.
cf. Act No.
21, 1923,
s. 25.

54. (1) The Governor may discharge from any institution any child or young person who has been committed to an institution for a specified term and restore him to the custody of his parent or other suitable person absolutely or on such terms and conditions as he may deem desirable.

(2) The Minister may discharge from any institution any child or young person who has been committed thereto but has not been so committed for a specified term and restore him to the custody of his parent or other suitable person absolutely or on such terms and conditions as may be prescribed or as he may, in any special case, deem desirable.

Absconder
may be
appre-
hended.
Ibid. s. 28.

55. If any person transferred to an institution pursuant to section ninety-four of this Act, or any ward, absconds or is absent from an institution without the leave of the superintendent, any officer or employee of the Child Welfare Department or any constable may apprehend and convey him to such institution to be delivered into the custody of the superintendent thereof.

PART XI.

PUNISHMENT OF INMATES IN INSTITUTIONS.

Interpreta-
tion.

56. (1) In this Part, unless the context otherwise requires—

“Inmate” means a child or young person committed to an institution by a court, or placed in an institution by direction of the Minister in pursuance of the provisions of section twenty-one of the Child Welfare Act, 1923, and any person committed or transferred to an institution in pursuance of this Act.

Discipline.

(2) The superintendent of any institution shall investigate complaints touching any of the following acts of misconduct by any inmate:—

- (a) disobedience of the rules of the institution;
- (b) assaults by one inmate upon another where no dangerous wound or bruise is given;
- (c)

- (c) insulting, obscene, indecent, or profane words;
- (d) threatening words to an officer, instructor, or inmate;
- (e) indecent behaviour, not amounting to an indictable offence;
- (f) irreverent behaviour at or during divine service or prayer;
- (g) idleness or negligence in work or wilful mismanagement of work;
- (h) lying or petty thieving;
- (i) conduct to the prejudice of good order and discipline.

(3) Where any inmate is found guilty of any of the acts of misconduct referred to in subsection two of this section, the superintendent may order one or more of the following methods of punishment:—

Superintendents' powers of punishment.

- (i) forfeiture of rewards or privileges, forfeiture or reduction of status or temporary loss of recreation;
- (ii) alteration of meals for a period not exceeding two days—provided that any such alteration shall be within the limits of a special dietary scale approved by the Director;
- (iii) isolated detention from other inmates in a room constructed for the purpose—
 - (a) in the case of an inmate over the age of fourteen years and under the age of sixteen years—for any period not exceeding twenty-four hours;
 - (b) in the case of an inmate of or over the age of sixteen years—for any period not exceeding forty-eight hours;
- (iv) fatigue duty for any period not exceeding seven days;
- (v) physical exercises, with proper rests, under the supervision of an officer or instructor for a period not exceeding thirty minutes on any one day, and not extending beyond a total period of seven days;
- (vi) corporal punishment, not exceeding a maximum of three strokes on each hand.

(4)

No. 17, 1939.

(4) Every effort shall be made to enforce discipline without the use of corporal punishment.

(5) Punishment by way of isolated detention shall be used only in exceptional cases, and subject to the following conditions:—

- (a) no inmate under fourteen years of age shall be placed in isolated detention;
- (b) the room used for the purpose shall be light and airy and kept dimly lighted after nightfall;
- (c) some form of useful occupation shall be provided;
- (d) some means of communication with a member of the staff shall be provided;
- (e) if the isolated detention is to be continued for more than twenty-four hours the circumstances shall immediately be reported to the Director;
- (f) no inmate shall be placed in isolated detention for two or more consecutive periods in any one fortnight.

Conditions governing corporal punishment.

(6) Corporal punishment shall be subject to the following conditions:—

- (a) it shall be inflicted only with a cane of a form and kind approved by the Minister;
- (b) it shall be inflicted by an officer or instructor appointed by the superintendent and in his presence;
- (c) it shall not be inflicted in the presence of other inmates.
- (d) it shall not be inflicted on any inmate who is of or above the age of sixteen years.

Serious misconduct of inmate under sixteen years of age.

(7) Where any male inmate is charged with any of the offences enumerated in subsection one of section fifty-seven of this Act, the superintendent—

- (a) shall inquire into and decide whether the inmate is or is not guilty;
- (b) may, in the case of any inmate, order any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of this section; and

(c)

- (c) may, in the case of an inmate under the age of sixteen years, in addition to, or in lieu of any other method of punishment, direct that the inmate be subjected to corporal punishment, not exceeding a maximum of three strokes on each hand. No. 17, 1939.

The powers conferred by this subsection may be exercised in respect of—

- (i) an inmate under the age of sixteen years;
- (ii) an inmate of or over the age of sixteen years where the Director has notified the superintendent that it is not advisable that such inmate should be taken before a court, but no such inmate shall be subjected to corporal punishment.

(8) Where any punishment (other than forfeiture of rewards or privileges, forfeiture or reduction of status, temporary loss of recreation and punishments imposed by a school teacher in respect of minor disciplinary misconduct in school) is ordered the superintendent shall record particulars thereof in the punishment book. Punishment book.

The punishment book shall be in or to the effect of the form prescribed.

(9) Striking, cuffing, shaking, or any other form of physical violence, other than that permitted by this Act, or under the general rules of law, is prohibited. Limitations.

A school teacher for minor disciplinary misconduct in school may administer, with a cane, not more than two strokes on each hand.

No inmate shall be punished by being dosed with medicine or any other substance.

No inmate shall be punished by being compelled to hold himself in a constrained or fatiguing position.

No inmate, without legal justification or excuse, shall be handcuffed or otherwise forcibly restrained.

No inmate shall be allowed to administer any form of punishment to any other inmate.

(10) In the case of an inmate with any physical or mental disability, corporal punishment shall not be ordered

No. 17, 1939. ordered or inflicted unless a medical officer has sanctioned the infliction of corporal punishment on such inmate either generally or in any particular case, but the superintendent of the institution may order any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of this section.

Females. (11) The following provisions shall have effect with respect to the punishment of female inmates—

- (a) in the case of any female inmate, any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of this section may be ordered;
- (b) in the case of any female inmate under the age of fifteen years, any one or more of the methods of punishment enumerated in paragraphs (i) to (vi) inclusive of subsection three of this section may be ordered.

Serious misconduct by inmates.

(12) Except as authorised in this Part, the superintendent of an institution shall not impose or inflict or allow any officer or instructor to impose or inflict any punishment for acts which constitute an offence punishable summarily or on indictment.

Serious misconduct.

57. (1) Where any inmate of or over the age of sixteen years is charged with—

- (a) gross insubordination; or
- (b) attempted absconding; or
- (c) wanton destruction, damage or disfigurement of any government property; or
- (d) assaulting an officer or instructor or a member of the domestic staff; or
- (e) cruelly maiming, wounding, or injuring any animal; or
- (f) persistent neglect or refusal to conform to the rules or routine of the institution; or
- (g) inciting other inmates to neglect or refuse to conform to such rules or routine,

he shall, subject to subsection four of this section, as soon as practicable, be taken before a magistrate sitting as and constituting a children's court, who shall hear and determine the matter.

(2)

No. 17, 1939.

Powers of
court.

(2) If the magistrate finds that the charge is proved, he may—

- (a) order the offender to be punished by any one or more of the methods of punishment enumerated in paragraphs (i) to (v) inclusive of subsection three of section fifty-six of this Act; or
- (b) order the offender to be punished by isolated detention within the institution for any term not exceeding seventy-two hours; or
- (c) order that the offender be detained for a specified term in a prison and kept to hard labour for any period not exceeding three months and direct that, on the expiration of the period of detention, the offender be returned to his former custody.

(3) If during the hearing any serious irregularity, misconduct or ill-treatment by any officer or instructor be admitted or proved, the magistrate shall forward a report to the Minister setting out the matters admitted or proved.

(4) Where an inmate of or over the age of sixteen years is charged with any of the offences enumerated in subsection one of this section the Director may if he deems it advisable in the interests of such inmate that such inmate should not be taken before a court notify the superintendent accordingly.

PART XII.

MAINTENANCE OF CHILDREN BY THEIR RELATIVES.

58. In this Part, unless the context otherwise requires— Interpreta-
tion.

“Near relative” means—

- (a) in the case of a lawful child—father, mother, step-father, and step-mother;
- (b) in the case of an illegitimate child—
 - (i) a person admitting himself to be or adjudged by a court to be the father;
 - (ii)

No. 17, 1939.

- (ii) the husband of the mother of such child where the child was born before his marriage to such mother; and
- (iii) the mother;
- (c) in the case either of a lawful or an illegitimate child, any person (other than the persons referred to in paragraphs (a) and (b) of this section) who is by law liable to maintain the child, including an adopting parent or a guardian but not including any other person whose liability for such maintenance is occasioned by or under this Act.

Liability of near relatives.
 cf. W.A. No. 31, 1907.
 Imp. Act. 23 Geo. V, ch. 12, s. 86.
 Vic. No. 3,654, s. 45.
 N.S.W. 21, 1923, ss. 26, 119.

59. (1) Where any child is a ward or where an order has been made by a court, committing a child—

- (a) to the care of any person; or
- (b) to the care of the Minister,

to be dealt with as a ward admitted to State control the near relatives shall be liable to pay, or contribute towards his maintenance, according to their several abilities, and in the order of priority set out in subsection two of this section.

(2) The order of priority in which near relatives shall be liable under subsection one of this section to pay or contribute shall be as follows, namely:—

(a) in the case of a lawful child—

- (i) first, the father of such child;
- (ii) second, the step-father of such child;
- (iii) third, the mother of such child;
- (iv) fourth, the step-mother of such child;
- (v) fifth, the near relative of such child referred to in paragraph (c) of section fifty-eight of this Act;

(b) in the case of an illegitimate child—

- (i) first, the person admitting himself to be or adjudged by a court to be the father of such child;
- (ii) second, the husband of the mother of such child where the child was born before his marriage to the mother:

(iii)

- (iii) third, the mother of such child;
- (iv) fourth, the near relative of such child referred to in paragraph (c) of section fifty-eight of this Act:

Provided that the person referred to in subparagraph (ii) of paragraph (b) of this subsection shall not be liable to pay or contribute towards the maintenance of an illegitimate child of his wife in any case where he satisfies the court that, at the time of his marriage, he was not aware of the child's existence.

(3) The court may at any time while the child remains a ward or during the currency of the order of committal on complaint by the Minister or any officer authorised in that behalf by the Minister, or by the person to whose care the child has been committed, inquire into the ability of any of the near relatives to maintain or contribute to the maintenance of the child, and—

Contribution order.

- (a) shall make an order (in this Part referred to as a "contribution order") for the payment by such one or more of the near relatives concerning whose ability to maintain or contribute to the maintenance of the child the inquiry was made as may be specified in the order of a reasonable sum towards the future maintenance of such child; or
- (b) shall certify that none of the near relatives concerning whose ability to maintain or contribute to the maintenance of the child the inquiry was made is able to maintain or contribute to the maintenance of the said child.

The issue of such certificate shall not prejudice the right of the Minister or any officer authorised by the Minister in that behalf or any person to whose care the child has been committed, at any time, to make a further application to a court under this section for a contribution order.

Right to apply for further order.

(4) The following provisions shall have effect with respect to every contribution order:—

- (a) The court shall, in making any contribution order, have regard to the order of priority in which the near relatives are liable to maintain or contribute to the maintenance of the child.

(b)