

# *The Prisons Act, 1903.*

(No. 14 of 1903, as amended by No. 6 of 1906.)

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SCHEDULES.

# WESTERN AUSTRALIA.



ANNO TERTIO

EDWARDI SEPTIMI REGIS.

\*\*\*\*\*

**No. 14 of 1903.**

(As amended by No. 6 of 1906.\*)

AN ACT to consolidate and amend the Law  
relating to Prisons.

[Assented to 31st December, 1903.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Prisons Act*, 1903, and shall come into operation on the first day of January, One thousand nine hundred and four. Short title and commencement.

2. This Act is divided into Parts, as follows:—

Division of Act.

PART I.—PRELIMINARY, ss. 1–6.

PART II.—PRISONS, ss. 7–16:—

- (1.) Establishment of Prisons, ss. 7–10;
- (2.) The Comptroller General, ss. 11–14;
- (3.) Officers, ss. 15–16.

PART III.—VISITORS, ss. 17–20.

PART IV.—MANAGEMENT AND DISCIPLINE, ss. 21–44.

PART V.—THE LAW OF PRISONS, ss. 45–56.

PART VI.—OFFENCES IN RELATION TO PRISONERS, ss. 57–64.

PART VII.—GENERAL PROVISIONS, ss. 65–79.

3.

\* Assented to 13th September, 1906.

Repeal.

3. The Acts specified in the First Schedule are hereby repealed, to the extent therein stated.

Interpretation.

4. In the interpretation of this Act, unless the context otherwise indicates,—

“Comptroller General” means the Comptroller General of Prisons appointed under this Act.

“Criminal Prisoner” means any person committed to prison under sentence of imprisonment for an indictable offence.

“Gaoler” includes the superintendent, keeper, or other officer in charge of a prison.

“Magistrate” means police magistrate or resident magistrate.

“Medical Officer” means the medical officer of the prison, or, where there is no such officer, the medical officer of the district in which the prison in respect of which the term is used is situated.

“Minister” means the responsible Minister of the Crown charged for the time being with the administration of this Act.

“Police Gaol” means any police station or lock-up proclaimed as a police gaol under the provisions of this Act, or any Act repealed by this Act.

“Police Officer” includes any constable or officer of police.

“Prescribed” means prescribed by regulations made under this Act.

“Prison” includes any gaol, police gaol, or penal outstation.

“Prisoner” means and includes any person committed to prison for punishment, or on remand, or for trial, safe custody, or otherwise.

“Prison Officer” means any superintendent, deputy superintendent, gaoler, warder, or matron of any prison, and includes any person employed in or about a prison not being a prisoner.

“Sheriff” means the Sheriff of Western Australia, or any deputy or under sheriff, or other person for the time being appointed by the Governor to discharge the duties imposed upon the Sheriff.

Existing rules and regulations.

5. All rules and regulations made under the authority of any Act hereby repealed, and in force at the commencement of this Act, shall continue in force until revoked or altered by regulations made under the provisions of this Act, except so far as any such rules and regulations are inconsistent with the provisions of this Act.

6.

6. All prisoners in custody at the commencement of this Act, under the provisions of any repealed Act, shall be deemed to be in custody under the provisions of this Act. Application of Act to prisoners already in custody.

## PART II.—PRISONS.

### (1.) *Establishment of Prisons.*

7. The gaols and police gaols and the penal outstation established before the commencement of this Act, and specified in the Second Schedule; are hereby declared to be gaols and police gaols and a penal outstation respectively within the meaning and for the purposes of this Act. Existing prisons continued.

8. (1.) The Governor may, by proclamation in the *Government Gazette*, declare— Prisons may be proclaimed.

- (a.) Any building, enclosure, or place to be a gaol;
- (b.) Any police station or lock-up to be a police gaol;
- (c.) Any place to be a penal outstation.

Every gaol, police gaol, or penal outstation so proclaimed shall thereupon be a prison within the meaning and for the purposes of this Act.

(2.) The Governor may in like manner discontinue and close any gaol, police gaol, or penal outstation, and direct the removal of the prisoners confined therein to some other prison to be named in the proclamation. Prisons may be closed.

(3.) Any proclamation made under this section may be altered or revoked by the Governor.

9. Any court having jurisdiction to commit any person to prison for imprisonment, with or without hard labour, may commit such person to, and direct his sentence to be served in a police gaol: Committal to police gaols.

Provided that no person shall be committed to a police gaol whose sentence exceeds three months, except for detention pending his removal to a gaol:

Provided also that any person committed to a police gaol may, at any time, be removed to a gaol by order of the Comptroller General.

This section shall apply to any person committed for contempt of court if the court should so direct.

10. The boundaries of every penal outstation shall be declared in the proclamation thereof. Penal outstations.

(2.)

(2.) *The Comptroller General.*

Comptroller  
General of Prisons.

**11.** The Governor may appoint an officer to be called the Comptroller General of Prisons.

Deputy Com-  
ptroller General.

**12.** In the case of illness, suspension, or absence of the Comptroller General, the Governor may appoint some person to act as his deputy during such illness, suspension, or absence, and until such appointment is terminated by notice in the *Government Gazette*.

Control of prisons  
and custody of  
prisoners.

**13.** (1.) The Comptroller General shall, subject to the exemptions hereinafter contained, and to the control of the Minister, have the care and direction of all prisons, and the custody of all convicted prisoners.

(2.) The custody of all persons committed to any prison before or after the commencement of this Act, not being prisoners under sentence for an indictable offence or under adjudication of imprisonment for an offence or breach of duty punishable on summary conviction, shall, together with all powers, rights, obligations, and liabilities in respect of such persons, whether under the provisions of any Act or at common law, continue to be vested in and incident to the Sheriff.

(3.) The Comptroller General and all prison officers shall hold prisoners who have not been convicted and sentenced as aforesaid for and on behalf of the Sheriff, who shall have such access to, communication with, and all other powers and authorities over or in reference to such prisoners as he would have had if this Act had not been passed.

Office of Com-  
ptroller General and  
Sheriff may be held  
jointly.

**14.** The office of Comptroller General of Prisons and the office of Sheriff may, for such time as the Governor thinks fit, be held by the same person.

(3.) *Officers.*

Appointment of  
officers of prisons.

**15.** (1.) The Governor may appoint to every prison a superintendent or gaoler, a medical officer, warders, trade instructors, and such other officers as may be necessary.

(2.) Any police officer may be appointed to be the keeper of a police gaol.

(3.) The Governor may delegate to the Comptroller General the appointment and dismissal of prison officers.

Status of officers  
appointed before  
commencement of  
Act.

**16.** The several officers appointed under any Act hereby repealed shall be deemed to have been appointed to their respective offices under and for the purposes of this Act.

PART

## PART III.—VISITORS.

17. The Governor may appoint for every prison visitors of whom two at least shall be justices of the peace, with such powers and duties as may be prescribed. Visitors.

18. It shall be the duty of visitors—

Duty of visitors.

- (1.) From time to time to visit the prison to which they are appointed.
- (2.) To make such reports to the Minister as they may think fit or the Minister require.

19. Subject to the regulations, any justice of the peace may enter and examine any prison at prescribed times, and may record any observations in the Visitors' Book; and it shall be the duty of the gaoler to draw the attention of the visitors, at their next visit to the prison, to any entries made in such book: Any justice may visit prisons.

But such justice of the peace shall not be entitled, under this section, to visit any prisoner under sentence of death.

20. Any Judge of the Supreme Court may visit and examine any prison at any time he may think fit. Judges of Supreme Court as visitors.

## PART IV.—MANAGEMENT AND DISCIPLINE.

21. The Governor may make regulations for all or any of the following purposes (that is to say):— Regulations for the management of prisons and the discipline therein.

- (1.) The appointment, duties, promotion, punishment, and dismissal of officers;
- (2.) The powers and duties of visitors;
- (3.) The construction and description of cells for the confinement or punishment of persons confined in prisons and the certifying the same as fit for the purpose;
- (4.) The safe custody, classification, separation, diet, instruction, treatment, and correction of prisoners;
- (5.) The hours of labour and mode of employment of prisoners;
- (6.) Regulating what labour or employment shall be deemed hard labour, and for classifying such labour;
- (7.) The gratuities to be credited to prisoners for approved work under trade instructors or at penal outstations;
- (8.) Providing for the ordinary remission of portions of sentences, and for extraordinary remission for special services, and for the forfeiture of remission for misconduct;

(9.)

(9.) The general management and good government of prisons, and the discipline and safe custody of the prisoners therein, and while employed at labour beyond the limits of the prison.

No. 6 of 1906, s. 2.

(10.) For taking the photograph, finger prints, measurements, and other particulars of any prisoner, and recording the same.

As to unconvicted prisoners.

**22.** Special regulations may be made for the treatment of prisoners unconvicted of crime during the period of their detention for safe custody only.

Such regulations may provide for all or any of the following matters:—

- (1.) With respect to communications between such prisoners, their solicitors and friends, to secure to such prisoners as unrestricted and private communication with their solicitors and friends as may be possible, having regard only to the necessity of preventing any tampering with evidence, and any plans for escape, or other like consideration;
- (2.) With respect to arrangements whereby such prisoners may provide themselves with articles of diet, and may be protected from being called upon to perform any unaccustomed tasks or offices;
- (3.) And generally regulating the confinement of such prisoners in such manner as to make it as little as possible oppressive, due regard only being had to their safe custody, to the necessity of preserving order and good government in the place in which they are confined, and to the physical and moral well-being of the prisoners themselves.

As to prisoners confined on civil process.

**23.** Special regulations shall be made with respect to the classification and treatment of the following persons, and for separating them altogether from criminal prisoners:—

- (1.) Persons arrested upon any civil process under any law for the time being in force;
- (2.) Persons imprisoned for non-compliance with the order of any court to pay a sum of money not being a fine or penalty for an offence;

But so that such regulations are in mitigation and not in increase of the effect of such imprisonment.

Rules for internal management.

**24.** The Comptroller General may, with the approval of the Minister, make rules for the internal management of any prison with respect to any matters not provided for in the regulations.

**25.**



**25.** (1.) In order to prevent contamination arising from the association of prisoners, any prisoner may, by order of the Comptroller General, be separately confined during the whole or any part of his imprisonment. Separate confinement.

(2.) Every cell used for the separate confinement of prisoners shall be of such a size and so ventilated and lighted that a prisoner may be confined therein without injury to health, and every prisoner so confined shall have the means of taking air and exercise at such times as the medical officer thinks necessary.

**26.** In every prison containing both male and female prisoners the females shall be imprisoned in separate buildings or separate parts of the same building in such manner, in so far as practicable, as to prevent their seeing, conversing, or holding any intercourse with the males. Female prisoners to be kept separate.

**27.** In every prison prisoners convicted of misdemeanour and not sentenced to hard labour shall be divided into two divisions, one of which shall be called the first division. Division of prisoners.

A misdemeanant of the first division shall not be deemed to be a criminal prisoner within the meaning of this Act. First division not criminal prisoners.

**28.** Whenever any person convicted of misdemeanour is sentenced to be imprisoned without hard labour, the Judge before whom such person has been tried may, if he thinks fit, order such person to be treated as a misdemeanant of the first division. As to prisoners convicted without hard labour.

**29.** (1.) The Comptroller General may order all prisoners under sentence of imprisonment without hard labour, except such prisoners who maintain themselves, to be set to some work or labour, provided the same is not severe. Persons imprisoned but not sentenced to hard labour.

(2.) No such prisoner who has the means of maintaining himself shall have any claim to be supplied at the public expense.

**30.** Any person in custody under sentence of imprisonment with hard labour or penal servitude may be employed at hard labour beyond the precincts of the prison in which he is lodged, and every such person, notwithstanding such employment, shall, while so beyond the precincts of the prison, be deemed to be within the limits of the prison in which he is lodged. Hard-labour prisoners may be employed outside the prison.

**31.** Every prisoner under sentence of penal servitude shall, during the term of his servitude, be kept at hard labour, and may be confined in such prison as the Comptroller General may from time to time direct. Prisoners under sentence of penal servitude to be kept at hard labour.

**32.**

Prisoners may be taken to labour outside walls of prison.

**32.** The Comptroller General may direct any male prisoner sentenced to imprisonment with hard labour or to penal servitude to be taken to a penal outstation for the purpose of labour outside the walls of a prison.

Visitors may hear complaints against prisoners.

**33.** Any visitor being a justice of the peace shall have power to hear complaints of prison offences committed by prisoners, and may examine any person touching any such offence upon oath or otherwise at his discretion.

Punishment for minor offences.

**34.** When any prisoner shall be found to have committed a minor prison offence as hereinafter defined, the visitor hearing the charge may punish such offence by ordering the offender—

- (1.) To be confined in a punishment cell on bread and water for any term not exceeding seven days; and
- (2.) In addition to such punishment to forfeit remission of sentence for any period not exceeding fourteen days.

Procedure in case of aggravated offence.

**35.** When any prisoner shall be found to have committed an aggravated prison offence as hereinafter defined, the visitor hearing the charge—

- (1.) May direct a complaint of such aggravated offence to be made before a magistrate or two justices of the peace; or
- (2.) May deal with the case as a minor prison offence.

Punishment for aggravated prison offences.

**36.** Upon complaint made before a magistrate or any two justices of the peace against any prisoner charged with an aggravated prison offence, as hereinafter defined, such magistrate or justices shall inquire into and determine the matter of the complaint, and the offender shall be liable on conviction—

- (1.) To be confined in a punishment cell (and, if a male, either with or without irons) for any term not exceeding one calendar month, and to be fed upon bread and water only for any time not exceeding fourteen days; or
- (2.) If a male offender, to receive corporal punishment as prescribed; or
- (3.) To be removed to a lower class; or
- (4.) To be suspended for a time without actual removal from the privileges of his class; or
- (5.) To be kept at hard labour, if not already sentenced to hard labour; or
- (6.) To forfeit, in addition to any such punishment, remission of sentence earned for any period not exceeding one year.

**37.**

**37.** The following shall be deemed to be minor prison offences:— Minor prison offences.

- (1.) Disobedience of the rules of the prison or any lawful order of a prison officer;
- (2.) Idleness or negligence in work or mismanagement of work;
- (3.) Common assault by one person confined in a prison upon another;
- (4.) Committing a nuisance;
- (5.) Preferring frivolous complaints against officers;
- (6.) Profane cursing or swearing;
- (7.) Indecent or insulting language or behaviour;
- (8.) Irreverent behaviour at Divine service or prayer;
- (9.) Pretending illness;
- (10.) Any other misconduct subversive of the order and good government of the prison.

**38.** The following shall be deemed to be aggravated prison offences:— Aggravated prison offences defined.

- (1.) Mutiny or open incitement to mutiny in a prison;
- (2.) Personal violence to any officer of the prison;
- (3.) Escaping or attempting to escape;
- (4.) Aggravated or repeated assault on a fellow-prisoner;
- (5.) Repetition of any minor prison offence after having been twice punished for the same minor offence;
- (6.) Wilfully and maliciously breaking, damaging, or destroying the prison property;
- (7.) Making or attempting to make any wound or sore;
- (8.) Preferring a false complaint against an officer of the prison;
- (9.) Any other act of gross misconduct or insubordination.

**39.** All complaints of prison offences shall be heard and determined in the presence of the prisoner charged, and in the prison where the offence was committed, or some other suitable place; but the magistrate or justices may, if he or they think fit, adjourn the hearing of an aggravated prison offence into open court. Hearing of complaints.

**40.** Any visitor imposing punishment for a prison offence shall enter and sign, in a book to be called "the Punishment Book," a statement of the nature of any offence that he has punished, with the name Punishment book to be kept.

name of the offender, the date of the offence, and the amount of punishment. A copy of every such entry shall be forthwith sent by the gaoler to the Comptroller General.

Punishment to be reported by gaoler.

**41.** The gaoler shall forthwith report to the Comptroller General every punishment ordered under section thirty-six of this Act, and such report shall state the name of the offender, the date of the offence, the nature of the offence, and the amount of punishment ordered.

Corporal punishments to be superintended by gaoler and medical officer.

**42.** All corporal punishments shall be attended by the gaoler and the medical officer.

The medical officer shall give such orders for preventing injury to health in the inflictions of such punishment as he may deem necessary, and it shall be the duty of the gaoler to carry them into effect in the presence of the medical officer.

The gaoler shall enter in the punishment-book the hour at which the punishment is inflicted, the particulars of the punishment, and any orders which the medical officer may have given on the occasion.

Mechanical restraint.

**43.** No prisoner shall be kept in irons for more than twenty-four hours without an order in writing from a visitor being a justice of the peace specifying the cause thereof and the time during which the prisoner is to be kept in irons, which order shall be preserved by the gaoler as his warrant.

Duty of gaoler.

**44.** No prisoner shall be put in irons by the gaoler of any prison without an order in writing from a visitor being a justice of the peace, except in case of necessity.

The particulars of every such case shall be forthwith entered in the gaoler's journal, and notice thereof given to one of the visiting justices.

#### PART V.—THE LAW OF PRISONS.

Custody of prisoner.

**45.** Every prisoner confined in a prison shall be deemed to be in the custody of the gaoler, and the liability of the Sheriff or other person delivering such prisoner shall cease on such delivery to the gaoler.

Gaoler to have charge of prison.

**46.** Every gaoler shall have the charge and superintendence of the prison for which he is appointed, and the custody of all persons imprisoned within the same; and he shall be liable to answer for the escape of any such person from his custody whenever such escape shall happen by or through his neglect and default, but not otherwise.

**47.**

**47.** Every prisoner shall be deemed to be in legal custody whenever he is being taken to or from any prison, or whenever he is working outside or is otherwise beyond the walls of any such prison in custody or under the control of a prison or police officer.

Legal custody of prisoners.

Any police or other officer acting under the order of any justice having power to commit a prisoner to prison may convey a prisoner to or from any prison to or from which he may be committed or removed.

**48.** Any prisoner confined in a prison whose term of imprisonment would, according to his sentence or the regulations relating to remission of sentences, expire on a Sunday, Christmas Day, or Good Friday, may claim his discharge on the Saturday next preceding such Sunday, or on the day next preceding Christmas Day or Good Friday.

When term of imprisonment expires on Sunday, etc.

Every gaoler having the custody of any such prisoner is hereby authorised to discharge such prisoner accordingly.

**49.** The Comptroller General may permit the discharge of any prisoner at any time during the seven days next preceding the day on which his sentence would lawfully expire.

Prisoners may be discharged seven days before expiration of sentences.

**50.** Any writ, warrant, or other instrument addressed to the gaoler of a particular prison, describing the prison by its situation or other definite description, shall be valid by whatever title such prison is usually known or whatever be the description of the prison.

Description of prison in writ.

**51.** The gaoler shall give notice to the Comptroller General of the death of every prisoner who may die within a prison, and an inquest shall be held by a justice of the peace on the body of every such prisoner.

Notice of death and inquest.

In no case shall any officer of the prison or any prisoner confined in the prison be a juror on such inquest.

The provisions of this section shall not apply to the case of a prisoner upon whom judgment of death is executed.

**52.** When a prisoner is charged with an offence, not being the offence or cause for which he is in custody, the Comptroller General or any court or justice may, by order in writing, direct the gaoler to bring up such prisoner before such court or such justices as shall then be present, to be dealt with according to law, and the gaoler shall obey such order and bring up such prisoner accordingly; and after he shall have been so dealt with he shall be restored to his former custody, without any further process or authority, and without prejudice to any cause or matter for which he was originally in custody.

Prisoners may be brought before Courts without writ of habeas corpus.

**53.**

Removal of  
prisoners.

**53.** Prisoners may be removed from one prison to another prison by order of the Comptroller General,—

- (1.) For the purpose of enabling any prison to be repaired, altered, enlarged, or rebuilt;
- (2.) In case of contagious or infectious disease breaking out in any prison;
- (3.) When any prison has been closed by order of the Governor;
- (4.) When any prison is overcrowded; or
- (5.) For any other cause, to be specified in such order.

Any prisoners removed from any prison in pursuance of this section may, by order of the Comptroller General, be taken back by the gaoler to the prison from which they were removed, or be removed to any other place in which they can legally be imprisoned.

Removal to  
hospital.

**54.** Any prisoner may, by order of the Comptroller General or medical officer, be removed from a prison to a hospital for medical treatment, and for the purposes of this section the expression hospital shall be taken to include a hospital for the insane.

Any prisoner so removed shall, during his treatment in the hospital, be deemed to be in the legal custody of the gaoler of the prison from which he was removed, and the Comptroller General may, if he thinks fit, appoint any prison officer to take charge of any prisoner while he is under treatment in a hospital.

On the certificate of the officer in charge of the hospital (which such officer is hereby required to give when the circumstances justify it) that a prisoner under treatment in the hospital may be discharged therefrom, such prisoner shall forthwith be returned to prison to complete the period of his sentence or to be otherwise dealt with according to law.

Any prisoner escaping or attempting to escape from any hospital shall be deemed to have escaped or attempted to escape from a prison, as the case may be, and shall be dealt with accordingly.

Temporary removal  
of prisoner.

**55.** Any prisoner may be taken temporarily, by authority of a warrant under the hand of the Minister, from any prison or place of detention to any place in the State for any purpose in aid of the administration of justice or other purpose which, in the opinion of the Minister, requires that such temporary removal should, in the ends of justice, be authorised.

Punishment of  
prisoners for mis-  
conduct during  
removal from one  
prison to another.

**56.** When a prisoner is received into a prison by removal from another prison, he may be punished under the regulations in force in the prison into which he is so received for any misconduct which

which he may have committed in the course of such removal, or within forty-eight hours before the commencement of the same, as if such misconduct had been committed by him within the prison into which he is so received.

#### PART VI.—OFFENCES IN RELATION TO PRISONERS.

**57.** Any person who, by force, rescues or attempts to rescue from lawful custody an offender under sentence of death, or a person committed to prison on a charge of a crime punishable with death, is guilty of a crime, and is liable to imprisonment with hard labour for life.

Forcibly rescuing capital offenders.

**58.** Any person who—

- (1.) aids a prisoner in escaping or attempting to escape from lawful custody; or
  - (2.) conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner,
- is guilty of a crime, and is liable to imprisonment, with or without hard labour, for any term not exceeding seven years.

Aiding prisoner to escape.

**59.** Any person who, being a prisoner in lawful custody under sentence after conviction for an offence, escapes or attempts to escape from such custody, is guilty of a crime, and is liable to imprisonment, with or without hard labour, for any term not exceeding three years.

Escape by prisoner.  
No. 6 of 1906, s. 3.

The offender may be tried, convicted, and punished, notwithstanding that at the time of his apprehension or trial the term of his original sentence has expired.

**60.** Any person who, being an officer of a prison or police officer, and having, for the time being, the custody of a prisoner or a person under arrest upon a charge of an offence, wilfully permits him to escape from custody, is guilty of a misdemeanour, and is liable to imprisonment, with or without hard labour, for any term not exceeding three years.

Permitting escape.

**61.** Any person who harbours, maintains, or employs a person who is, to his knowledge, under sentence of such a kind as to involve deprivation of liberty, and illegally at large, is guilty of a misdemeanour, and is liable to imprisonment for any term not exceeding two years, or to a fine not exceeding two hundred pounds.

Harbouring escaped prisoners.

**62.** Every person who, contrary to the prison regulations,—

- (1.) brings or attempts by any means whatever to introduce into any prison any spirituous or fermented liquor, or tobacco, opium, or other prohibited article;

Bringing spirituous liquors or tobacco into a prison.

And

And every prison officer who, contrary to the prison regulations,—

- (2.) suffers any spirituous or fermented liquor, or tobacco, opium, or other prohibited article to be sold or used therein ;

shall, on summary conviction, be liable, in the discretion of the justices, to imprisonment for any period not exceeding six months, or to a penalty not exceeding fifty pounds, or to both such punishments:

And, if a prison officer, he shall, in addition to any other punishment, be liable to forfeiture of his office and all arrears of pay due to him.

Offences against  
prison regulations.

**63.** Every person who, contrary to the regulations,—

- (1.) enters or attempts to enter any prison ;
- (2.) communicates, or attempts to communicate with any prisoner ;
- (3.) conveys or delivers, or in any manner whatsoever attempts to convey or deliver, or to cause to be conveyed or delivered to any prisoner, or introduces or attempts to introduce into any prison, any money, letter, or other document, clothing, or other article or thing ;
- (4.) conveys or receives, or attempts to convey or receive, any letter or other document, or any article out of any prison ;
- (5.) loiters about or near any prison, or other place where prisoners are employed ; or
- (6.) secretes or leaves at any place any letter, article, or thing, for the purpose of being found or received by any prisoner ;

shall be liable to be apprehended without warrant by any police or prison officer, or other person in whose charge or custody any such prisoner may then be, and detained and kept in safe custody until he can be brought before two or more justices of the peace, who shall have power to hear and determine such offence.

Upon conviction any such offender shall, for any such offence, be liable to a penalty not exceeding fifty pounds, or in the discretion of such justices, to imprisonment with hard labour for any period not exceeding six months.

Unlawful purposes  
presumed.

**64.** Any person found in or about or near any prison, or other place where prisoners are confined or employed, who, upon being duly warned by any prison officer or police officer to depart therefrom, refuses or neglects so to do, shall be deemed to be loitering for any of the



the purposes aforesaid, and may be forthwith apprehended without warrant and kept in safe custody until he can be brought before the justices.

#### PART VII.—GENERAL PROVISIONS.

**65.** Offences under this Act, with the exception of crimes and of offences for the mode of trial of which express provision is made by this Act, may be prosecuted summarily before two or more justices of the peace, and in manner directed by the Justices Act, 1902.

Recovery of penalties.

**66.** Notwithstanding that any lock-up or place used for the reception or detention of accused persons before trial is declared a police gaol, the same shall continue to be and to be used as a lock-up for any purpose for which the same might have been or was used before such declaration; and in relation to all accused persons from time to time in custody therein awaiting trial, the same shall for all purposes be deemed a lock-up only.

Police gaols still to remain lock-ups.

**67.** (1.) Nothing in this Act shall affect the control of the Commissioner of Police over lock-ups which are declared to be police gaols, and over the management of the same and the officers employed thereat, so far as such control and management and officers relate to accused persons before trial, and the use and management of the police gaol as a lock-up.

Commissioner of Police to retain immediate control of lock-ups.

(2.) Any question arising out of any conflict or apparent conflict of the respective powers and authorities of the Comptroller General of Prisons and the Commissioner of Police in relation to any lock-up or police gaol, or in relation to any person employed thereat or confined therein, shall be decided by the Minister.

Any question between Comptroller General of Prisons and Commissioner to be decided by Minister.

**68.** A prisoner who escapes from lawful custody while undergoing a sentence of imprisonment shall, unless the Governor otherwise directs, on recapture, undergo imprisonment for a term equal to that during which he has been absent from prison after the escape and before the expiration of the term of his original sentence, whether at the time of recapture the term of that sentence has or has not expired.

Time during which prisoner unlawfully at large excluded in computing sentence.

**69.** (1.) All laws, regulations, and rules affecting the discipline and conduct of persons sentenced to imprisonment or penal servitude, and all penalties for breaches of or offences against such laws and regulations, shall bind and affect such persons until *de facto* released from custody.

Prisoners sentenced for breaches of prison regulations to undergo punishment notwithstanding expiry of original sentence.

(2.) Any person who, before being actually released as aforesaid, does any act or thing which would, if committed by a prisoner whose sentence was unexpired, render such prisoner liable to any punishment

punishment whatsoever, under any such law or regulation, shall be liable to receive and undergo, within the prison in which such person is confined, the same punishment as if his sentence or sentences had remained unexpired at the time he did such act or thing.

(3.) A prisoner who is charged with any breach of or offence against any such law or regulation, and whose sentence expires within seven days of such charge and before the same can be heard, shall continue in custody until the same has been heard and the punishment awarded (if any) undergone.

(4.) A prisoner who is sentenced to or undergoing any punishment for a breach of any such law or regulation at the time the sentence on which he was imprisoned expires shall nevertheless undergo or complete such punishment as the case may be.

(5.) A prisoner within the operation of this section shall, until entitled to be released, be treated as if his original term of imprisonment were unexpired.

Discharged  
prisoners may be  
provided with  
means of returning  
home.

**70.** When a prisoner is discharged from prison, the Comptroller General may provide such prisoner, out of any moneys under his control and applicable to the purpose, with means of returning to his home or usual place of residence by causing his fare to be paid by railway or in any other convenient manner.

Commitments under  
Debtors' Act.

**71.** Commitments under the provisions of the Debtors Act, 1871, or any amendment thereof, may be made to any prison or police gaol established under this Act:

But the Judges of the Supreme Court may make such rules and regulations for the custody of debtors as they may think fit.

Persons in custody  
required to give  
evidence may be  
brought up on order.

**72.** When any person is detained in any prison under sentence or awaiting trial, or on remand for any offence, or for any other cause, and a trial, inquiry, inquest, or inquisition is pending at which it is deemed necessary that such prisoner should be present, any Judge or Commissioner of the Supreme Court, chairman of quarter sessions, or justice of the peace may make an order under his hand directing any gaoler to produce such person; and such order shall be sufficient warrant or authority to any gaoler for producing such prisoner.

Prisoners brought  
up as aforesaid to be  
returned to custody.

**73.** Every prisoner brought up under any order issued under sections fifty-two or seventy-two shall be deemed to be in the legal custody of the police officer, gaoler, or other officer having the temporary custody of such person and acting under such order, who shall in due course return the prisoner into the custody from which he shall have been so brought up.

**74.**

**74.** Any guard, gaoler, warder, police officer, or other person lawfully charged with the custody of any prisoner under sentence of death or penal servitude or imprisonment for any term, may fire upon any such prisoner while attempting to escape from any prison or other place, or while attempting to assault any guard, gaoler, warder, police officer, or other person as aforesaid, or any other prisoner:

Guard, etc., may fire on prisoner in certain cases.

Provided that such firing shall appear to be necessary to prevent the escape of such prisoner, or the assault committed or attempted by such prisoner was of a character apparently dangerous to the life or likely to cause bodily harm to the person assaulted or threatened.

**75.** No action or claim for damages shall lie against any person for or on account of anything done or commanded to be done by him, and purporting to be done for the purpose of carrying out the provisions of this Act, unless it is proved that such act was done or commanded to be done maliciously and without reasonable and probable cause.

No action to lie against person who has acted without malice.

**76.** (1.) No action shall be commenced until one month next after notice, in writing, has been delivered to the person against whom it is intended to be brought, or left at his usual place of abode.

Notice of action.

(2.) Such notice shall clearly state the cause of action, the name and place of abode of the plaintiff, and the name and place of business of his solicitor (if any), and shall be signed by the plaintiff.

(3.) Every such action shall be commenced within three months after its cause shall have arisen and not afterwards, and the venue shall be local, and the defendant may plead the general issue and give any special matter in evidence.

(4.) Proceedings in such action shall be stayed unless security for costs is given by the plaintiff, or if the court or a Judge is satisfied that there is no reasonable ground for the action, or that notice of action has not been given, or the proceedings have been commenced after the expiration of the three months aforesaid.

**77.** All regulations made under this Act shall be published in the *Government Gazette*, and thereupon shall have the force of law; and shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is then in session, and if not, within fourteen days after the commencement of the next ensuing session.

Publication of regulations.

All or any of such regulations may be made to apply generally to all prisons, or to any one or more prisons to be specified.

Regulations may be of general or local application.

**78.**

Saving of regulations as to tickets-of-leave.

**78.** Nothing in this Act shall affect any regulation in force at the commencement of this Act, relating to the issue of tickets-of-leave to prisoners under sentence of penal servitude, and such regulations are hereby declared to be valid.

Annual report of Comptroller General.

**79.** The Comptroller General shall, as soon as practicable after the close of each year, make and deliver to the Minister a report upon the state and condition of all prisons throughout the State, and upon all matters affecting their management, and shall include therein such observations and recommendations as he may think fit to make.

## The First Schedule.

Section 3.

Date of Act.	Title or Short Title.	Extent of Repeal.
6 & 7 Will. IV. c. 30	An Act to repeal so much of two Acts of the ninth and tenth years of King George IV., as directs the period of Execution and the Prison Discipline of persons convicted of the crime of Murder.	The whole.
4 & 5 Vict., No. 21	An Act to constitute the Island of Rottnest a Legal Prison	The whole.
12 Vict., No. 7	An Ordinance for the Regulation of Gaols, Prisons, and Houses of Correction in the Colony of Western Australia, and for other purposes relating thereto	So much as is not already repealed.
14 Vict., No. 6	An Ordinance to provide for the due Custody and Discipline of Offenders transported to Western Australia, and of Offenders sentenced therein to transportation	So much as is not already repealed.
16 Vict., No. 18	An Ordinance to make further provision for the due Custody and Discipline of Offenders transported to Western Australia, and Offenders sentenced therein to transportation	The whole.
17 Vict., No. 5	An Ordinance to amend the Ordinance No. 18, of 1853	The whole.
17 Vict., No. 7	An Ordinance for the Suppression of Violent Crimes committed by Convicts illegally at large	The whole.
19 Vict., No. 8	An Ordinance to substitute other Punishment in lieu of Transportation	So much as is not already repealed.
21 Vict., No. 1	An Ordinance to make additional provisions for Convict Discipline in Western Australia	So much as is not already repealed.
21 Vict. No. 12	An Ordinance to extend and enlarge the provisions of an Ordinance passed in the twelfth year of the reign of Her Majesty Queen Victoria, intituled "An Ordinance for the Regulation of Gaols, Prisons, and Houses of Correction in the Colony of Western Australia, and for other purposes relating thereto"	The whole.
24 Vict., No. 1	An Ordinance to amend the Ordinance 19th Victoria, No. 8, of 1856. to substitute in certain cases other punishment in lieu of Transportation	The whole.

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THE FIRST SCHEDULE—*continued.*

Date of Act.	Title or Short Title.	Extent of Repeal.
32 Vict., No. 9	An Ordinance to make better provision for the Suppression of Violent Crimes committed by Convicts	The whole.
41 Vict., No. 2	The Road Parties Discipline Act, 1877.	The whole.
43 Vict., No. 4	An Act to make additional provisions for Prison Discipline in Western Australia	The whole.
51 Vict., No. 5	The Prisoners Employment Act, 1887	The whole.
58 Vict., No. 10	The Colonial Prisoners Removal Act, 1894	The whole.
1 & 2 Edw. VII., No. 3	The Gaols Act Amendment Act, 1902	The whole.

## Section 7.

## The Second Schedule.

The Gaol at Albany.  
 The Gaol at Bunbury.  
 The Gaol at Busselton.  
 The Gaol at Broome.  
 The Gaol at Carnarvon.  
 The Gaol at Fremantle.  
 The Gaol at Geraldton.  
 The Gaol at Newcastle.  
 The Gaol at Roebourne.  
 The Gaol at Wyndham.  
 The Gaol at York.  
 The Police Gaol at Bridgetown.  
 The Police Gaol at Collie.  
 The Police Gaol at Cue.  
 The Police Gaol at Coolgardie.  
 The Police Gaol at Derby.  
 The Police Gaol at Kalgoorlie.  
 The Police Gaol at Leonora.  
 The Police Gaol at Marble Bar.  
 The Police Gaol at Menzies.  
 The Police Gaol at Mount Malcolm.  
 The Police Gaol at Mount Morgans.  
 The Police Gaol at Perth.  
 The Police Gaol at Southern Cross.  
 The Penal Outstation at Hamel.