

Laws of His Majesty's Province of Upper Canada, passed in the year 1834. York: Robert Stanton, 1834.

4 William IV — Chapter 37

An Act to provide for the Maintenance and Government of the Provincial Penitentiary, erected near Kingston, in the Midland District. Passed 6th March, 1834.

Whereas, if many offenders convicted of crimes were ordered to solitary imprisonment, accompanied by well regulated labor and religious instruction, it might be the means under Providence, not only of deterring others from the commission of like crimes, but also of reforming the individuals, and inuring them to habits of industry: And whereas it is expedient to provide for the maintenance and good government of the Provincial Penitentiary erected near Kingston, in the Midland District, and to define the general powers and duties of the Officers who are to be connected therewith: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "*An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'*" and by the authority of the same, That the said Penitentiary shall be under the direction of five Inspectors, to be appointed by the Governor, Lieutenant Governor, or Person Administering the Government of this Province, immediately after the passing of this Act, and to hold their office during pleasure; and that the said Board of Inspectors shall, from time to time, choose one of their number to be their President, and shall have full power and authority to make all necessary rules and regulations respecting the discipline and Police of the said Penitentiary.

II. And be it further enacted by the authority aforesaid, That the Inspectors of the said Penitentiary shall have power, and it shall be their duty from time to time, to examine and inquire into all matters connected with the Government, Discipline and Police of the said Penitentiary; the punishment and employment of the prisoners therein confined; the financial concerns and contracts for work; and the purchases and sales of the articles provided for such Penitentiary, or sold on account thereof; and that they may from time to time require reports from the Warden or other Officers of the Penitentiary, in relation to any or all of the said matters.

III. And be it further enacted by the authority aforesaid, That it shall be the duty of the said Board of Inspectors to inquire into any improper conduct which may have been alleged to have been committed by the Warden or other Officers of the said Penitentiary; and for that purpose they shall have power to issue Subpoenas to compel the attendance of Witnesses, and the production of papers and writings before them; and that any Witnesses who shall

appear before them, may be examined on oath, to be administered by the President of the Board.

IV. And be it further enacted by the authority aforesaid, That any Witness or Witnesses who shall wilfully and corruptly forswear themselves, such Witness or Witnesses shall, on conviction, suffer the pains and penalties inflicted on persons guilty of wilful and corrupt perjury.

V. And be it further enacted by the authority aforesaid, That it shall be the duty of the Warden and other Officers of the said Penitentiary, to admit the Inspectors of such Penitentiary, or any of them, into every part of said Penitentiary; to exhibit to them, on demand, all the books, papers, accounts and writings pertaining to the Penitentiary, or to the business, management, discipline and government thereof, and to render them every facility in their power to enable them to discharge their several duties.

VI. And be it further enacted by the authority aforesaid, That the Board of Inspectors shall keep regular minutes of its meetings and proceedings, which shall be signed by the Members of the Board, and preserved in the Penitentiary; and it shall be the duty of the said Board of Inspectors to meet once in every two months at the Penitentiary, and then to inspect the same; and they shall annually, on or before the first day of November, make a report to the Legislature of the state and condition of the said Penitentiary; of the Prisoners confined therein; of the monies expended and received, and generally of all their proceedings during the past year: Provided always, that no Inspector of the said Penitentiary shall be Warden thereof, or be concerned in the business of such Warden, or hold any other appointment connected with the Penitentiary.

VII. And be it further enacted by the authority aforesaid, That the Officers of the said Penitentiary shall be as follows: one Warden or Principal Superintendent, who shall reside at or near the Penitentiary; one Clerk; one Chaplain; one Physician and Surgeon; one Deputy Warden, who shall also reside at or near the Penitentiary; and not exceeding twenty Keepers; such Clerk and Keepers to be appointed by the Board of Inspectors, and to hold office during pleasure; and the Warden, Chaplain, Physician, and Deputy Warden, to be appointed by the Governor, Lieutenant Governor, or Person Administering the Government of the Province, and to hold their respective offices during pleasure.

VIII. And be it further enacted by the authority aforesaid, That the Governor, Lieutenant Governor, or Person Administering the Government, is hereby authorised to procure a Guard, which said Guard, while on duty at the Penitentiary, shall be subject to the orders of the Warden or his Deputy.

IX. And be it further enacted by the authority aforesaid, That the Warden of said Penitentiary, before entering on the duties of his office, shall execute a Bond to His Majesty, with sufficient sureties to be approved by the Inspectors of the Penitentiary, in the penal sum of two thousand pounds, conditioned for the faithful performance of the duties of his

Office according to law, which Bond shall be according to the form annexed, and shall be filed in the Office of the Secretary of the Province; and the said Warden, Clerk, Deputy Warden and Keepers of said Penitentiary shall, before they enter on the duties of their respective offices, severally take and subscribe, before the Chairman of the Quarter Sessions of the Midland District, the following Oath of Office, such Oath to be filed in the Office of the Clerk of the Peace of the said District.

“I, A.B. do promise and swear, that I will faithfully, diligently and justly serve and perform the office and duties of ____, of the Provincial Penitentiary in Upper Canada, according to the best of my abilities, ____ So help me God.”

X. And be it further enacted by the authority aforesaid, That it shall be the duty of the said Warden, or his Deputy, to attend constantly at the Penitentiary, except when performing some other necessary duty connected with his office; to exercise a general supervision over the Government, Discipline and Police of the said Penitentiary; to give the necessary directions to the Keepers, and to examine daily into the state of the Penitentiary, and the health, conduct and safe keeping of the Prisoners; to use every proper means to furnish such Prisoners with employment the most beneficial to the public, and the best suited to their various capacities; and to superintend all the manufacturing and mechanical business that may be carried on within the Penitentiary; to receive the articles so manufactured, and to sell and dispose of the same for the benefit of the Province, when the labor of the Convicts is not let out by contract.

XI. And be it further enacted by the authority aforesaid, That all transactions and dealings on account of the said Penitentiary, shall be conducted by and in the name of the Warden, who shall be capable in law of suing and being sued in all Courts and places, and in all matters concerning the said Penitentiary, by his name of office of “Warden of the Provincial Penitentiary in Upper Canada;” and by that name the said Warden shall be and is hereby authorised to sue for and recover all sums of money that may become due from any person to the Province, on account of the said Penitentiary; and it shall be the duty of the said Warden, to enforce the payment of all debts due to the Institution under his charge, as soon and with as little expense to the Province as possible: but he may, with the approbation of the Inspectors, accept of such security from any debtor, on granting time, as may be conducive to the interests of the Province.

XII. And be it further enacted by the authority aforesaid, That whenever any controversy shall arise, relative to any claim or demand which any person may have against the said Warden, or relative to any claim or demand which the said Warden may have against any person on account of the Penitentiary, such controversy may be referred to the arbitration of two or more persons mutually chosen by such Warden, and the person with whom such controversy may exist.

XIII. And be it further enacted by the authority aforesaid, That whenever the Inspectors of said Penitentiary shall so direct, it shall be the duty of the Warden of the said Penitentiary to

make contracts from time to time for the labor of the Convicts confined therein, or of any of the said Convicts, with such persons and upon such terms as may be deemed by the said Warden most beneficial to the Province; and all contracts so to be made, shall be reduced to writing, and a counterpart or copy of every such contract shall be filed with the Clerk of the Penitentiary, and a copy thereof shall be delivered to the Inspectors.

XIV. And be it further enacted by the authority aforesaid, That the Prisoners confined in the said Penitentiary shall be supplied with provisions by contract, unless the Inspectors shall otherwise direct, which contract shall be made by the Warden annually or semi-annually, under direction of the Inspectors, with such persons as may be willing to accept the lowest terms, at a fixed price per day for each Prisoner; the articles of food, and the quantities of each kind, to be prescribed by the Inspectors, and inserted in the contract; and so many rations shall be delivered at the Penitentiary daily, or at such other times as may be agreed on, as there are Convicts confined therein; and for the purpose of ascertaining who will furnish supplies on the lowest terms, the Warden shall cause a notice to be published in two of the Newspapers printed in the District in which the Penitentiary is situated, and in such other Newspapers and for such time as the Inspectors shall direct, stating the particular supplies wanted, the manner in which they are to be delivered, and the time during which proposals will be received by such Warden for furnishing the same; the proposals to be offered, pursuant to such notice, shall specify the lowest price per ration per day, and the contracts shall be made with those persons whose terms shall be the most advantageous to the Province, and who shall give satisfactory security for the performance of their contracts, unless the Inspectors shall deem it expedient to decline all the proposals and advertise anew.

XV. And be it further enacted by the authority aforesaid, That the necessary medicines and other Hospital stores, for the use of the Penitentiary, shall be purchased from time to time, as may be requisite, by the Warden of the Penitentiary, with the advice of a Physician, and under the direction of the Inspectors.

XVI. And be it further enacted by the authority aforesaid, That the Warden may purchase such raw materials as may be necessary to be manufactured by the Convicts in the Penitentiary, and to be paid for by the said Warden, out of any money in his hands belonging to the Province; and whenever any supplies or materials for the Penitentiary shall be purchased, it shall be the duty of the Warden to take bills thereof at the time of such purchase, and the Clerk shall compare such bills with the articles delivered at the Penitentiary, and if found to be correct, shall enter them in books to be provided for the purpose; and whenever any services shall be rendered for the said Penitentiary, it shall in like manner be the duty of the Warden to take bills thereof at the time of making payment therefor, every such bill to be entered by the Clerk in the books of the Penitentiary, unless he shall know or have reason to believe that such bills are erroneous.

XVII. And be it further enacted by the authority aforesaid, That no Inspector, Warden, or other Officer or person employed at the Penitentiary, shall be directly or indirectly

interested in any contract, purchase or sale, for, by or on account of said Penitentiary, under the penalty of one hundred pounds, to be recovered by action of debt in any of His Majesty's Courts in this Province, which penalty so recovered, shall be paid into the hands of His Majesty's Receiver General, for the public uses of the Province.

XVIII. And be it further enacted by the authority aforesaid, That it shall be the duty of the said Warden to keep a regular and correct account of all monies received by him from any source whatever, by virtue of his office, including all monies taken from Convicts, or received as the proceeds of property taken from them, and of all sums paid by him, and the persons to whom, and the purposes for which the same were paid; and to make out and deliver to the Inspectors, or one of them, monthly, on oath, a return of all monies received by him on account of the Penitentiary during the preceding month, specifying from whom received and to whom paid, and on what account, and stating also the balance in his hands at the time of rendering such account.

XIX. And be it further enacted by the authority aforesaid, That the said Warden shall annually close his account on the first day of October in every year; and on or before the first day of November thereafter, shall render to the Governor, Lieutenant Governor, or Person Administering the Government, to be laid before the Legislature, a full and true account of all monies received by him on account of the Penitentiary, and of all monies expended by him for the uses thereof, with sufficient vouchers for the same; and also an inventory of the goods, raw materials and other property of the Province on hand, exhibiting a complete detail of the transactions of the Penitentiary for the year; and to the several returns, accounts and inventories required to be rendered by the preceding clauses, there shall be annexed an affidavit of the Warden and Clerk of the Penitentiary, stating that the same are correct and true, in every respect, to the best of their knowledge and belief.

XX. And be it further enacted by the authority aforesaid, That the Warden shall, on or before the fifteenth of October in every year, transmit to the Inspectors of the Penitentiary a report, exhibiting a complete and comprehensive view of the transactions of the Penitentiary during the preceding year; of the number of Convicts confined therein; the various branches of business in which they are employed; the number employed in each branch, and the profits to the Province, if any, arising therefrom.

XXI. And be it further enacted by the authority aforesaid, That the Warden, Deputy Warden, Keepers and other Officers of the Penitentiary, shall not receive any perquisites or emoluments for their services, other than the compensation provided by this Act; except that the Warden and his Deputy shall be provided with dwellings at or near the Penitentiary, and shall be furnished with fuel and candles from the stock provided for the use of the Province, and with servants from among the Convicts, if they shall think proper.

XXII. And be it further enacted by the authority aforesaid, That it shall be the duty of the said Warden annually, on or before the first day of October in each year, to make a report to the Governor, Lieutenant Governor, or Person Administering the Government of the

Province, of the names of the Convicts discharged in the preceding year from the said Penitentiary, either by pardon or upon the expiration of the term for which they were respectively to be confined; the Districts in which they were tried; the crimes for which they were convicted; the terms of time for which they were severally committed; the ages and description of their persons; and in cases of pardons, the terms unexpired of the time for which such Convicts were respectively sentenced; when such pardons were granted; and the conditions, if any, upon which they were granted.

XXIII. And be it further enacted by the authority aforesaid, That whenever there shall exist a vacancy in the office of Warden of the said Penitentiary, or when the Warden shall be absent from the Penitentiary, all the duties and powers of said Warden, so far as the same relate to the safe keeping of the Prisoners and the discipline of the Penitentiary, shall devolve upon and be executed by the Deputy Warden of said Penitentiary, until such vacancy be filled, or the Warden return to the Penitentiary.

XXIV. And be it further enacted by the authority aforesaid, That it shall be the duty of the Physician of the said Penitentiary, to keep a register of all the sick Convicts placed under his care, stating the disease with which they are or were afflicted, and the date of their entering and leaving the Hospital; also, a register of the deceased Convicts, stating their names, ages, time and cause of death, and all other circumstances which they may deem necessary; which register shall always remain at the Penitentiary, and be open for inspection.

XXV. And be it further enacted by the authority aforesaid, That all books of account, registers, returns, and other documents and papers relating to the affairs of the Penitentiary, shall be considered as public property, and remain therein; and the Warden of the said Penitentiary shall preserve therein at least one set of copies of all official reports made to the Legislature respecting the same, for which purpose a suitable number of such reports, when printed, shall be supplied to him.

XXVI. And be it further enacted by the authority aforesaid, That the Warden of the Penitentiary shall receive annually, the sum of two hundred pounds; and the Deputy Warden, the annual sum of one hundred and fifty pounds, to be paid out of any monies that may be provided for that purpose; and that the Physician and Surgeon,, the Chaplain, the Clerk, the Keepers and the Guard, shall respectively receive such annual remuneration for their services, as the Inspectors, with the approbation of the Governor, Lieutenant Governor, or Person Administering the Government of this Province, may deem just and reasonable: Provided always, that none of the salaries mentioned in this Act shall commence until the said Penitentiary shall be so far completed as to be in readiness for the reception and confinement of Prisoners.

XXVII. And be it further enacted by the authority aforesaid, That all Convicts in the Penitentiary, other than such as are confined in solitude for misconduct in the Penitentiary, shall be kept constantly employed at hard labor during the day time, except when incapable of laboring by reason of sickness or bodily infirmity, and except on Sunday, Christmas day

and Good Friday, and that it shall be the duty of the Warden to keep each Prisoner singly in a cell at night, and also during the day time when unemployed.

XXVIII. And be it further enacted by the authority aforesaid, That the clothing and bedding of the Convicts shall be of coarse materials, manufactured, when it can be done, in the Penitentiary; they shall be supplied with a sufficient quantity of inferior and wholesome food; and it shall be the duty of the Warden to furnish at the expense of the Province, a bible to each Convict confined in the Penitentiary who can read.

XXIX. And be it further enacted by the authority aforesaid, That when several Convicts combined, or any Convict alone shall offer violence to any Officer of the Penitentiary, or to any other Convict, or do or attempt to do any injury to the Building or any Workshop, or to any appurtenances thereof, or attempt to escape, or resist or disobey any lawful command, the Officers of the Penitentiary or either of them shall and may use all suitable means to defend themselves, to enforce the observance of discipline, to secure the persons of the offenders, and to prevent any such escape.

XXX. And be it further enacted by the authority aforesaid, That it shall be the duty of the said Warden to take charge of any property which any Convict shall have with him at the time of entering the Penitentiary, and if it be not demanded by any Trustee of the estate of such Convict, appointed pursuant to law, the Warden shall preserve the same for the benefit of such Convict or his representatives, and the said Warden shall keep a correct account of all such property, and shall pay the amount thereof to such Convict when released or to his legal representatives; and in case of the death of such Convict without being released, if no legal representative shall demand such property within one year, then the same shall be applied to the use of the Province.

XXXI. And be it further enacted by the authority aforesaid, That whenever any Convict shall be discharged either by pardon or otherwise, it shall be the duty of the Warden to furnish such Convict necessary clothing, not exceeding three pounds in value, and such sum of money not exceeding one pound, as the said Warden may deem proper and necessary.

XXXII. And be it further enacted by the authority aforesaid, That no person shall without the consent of the Warden, bring into or convey out of the Penitentiary any letter or writing to or from a convict: and whoever shall violate the provisions of this clause shall be deemed guilty of a misdemeanor.

XXXIII. And be it further enacted by the authority aforesaid, That the following persons shall be authorised to visit the Prison at pleasure, namely, the Governor, Lieutenant Governor or Person Administering the Government of the Province, the Members of the Legislature, the Judges of the Court of King's Bench, and the Attorney and Solicitor Generals, and no other persons shall be permitted to enter within the walls where the Convicts are confined, except by the special permission of the Warden, or under such regulations as the Inspectors shall prescribe.

XXXIV. And be it further enacted by the authority aforesaid, That whenever any Convict shall be delivered to the Warden or his Deputy, the Officer having such Convict in charge, shall deliver to such Warden the certified copy of the sentence received by such Officer from the Clerk of the Court, and shall take from such Warden a certificate of the delivery of such Convict; and whenever any Convict confined in said Penitentiary shall escape therefrom, it shall be, the duty of the Warden of such Penitentiary to take all proper measures for the apprehension of such Convict, and for that purpose he may offer a reward, not exceeding fifty pounds, for the apprehension and delivery of such Convict.

XXXV. And be it further enacted by the authority aforesaid, That it shall not be lawful for any Coroner to hold an inquest in the said Penitentiary, upon the body of any deceased Convict, unless requested by the Warden of the Penitentiary, or one of the Inspectors, but it shall be the duty of the Warden to call the Coroner in all cases of death of any Convict, from any cause other than ordinary sickness; and whenever a Convict shall die, it shall be the duty of the Warden, unless the body of such Convict shall be taken away for interment by the relatives of the deceased, within twenty-four hours after his death, to deliver on demand such dead body to the Agent of the Medical Society of the District wherein the the Penitentiary shall be situated.

XXXVI. And be it further enacted by the authority aforesaid, That in case any pestilence or contagious disease should break out among the Convicts of the said Penitentiary, or in the vicinity thereof, the Inspectors of the Prison may cause the Convicts confined in such Penitentiary, or any of them, to be removed to some suitable place of security, where such of them as may be sick shall receive all necessary care and medical assistance; such Convicts shall be returned as soon as may be to the Penitentiary, to be confined therein according to their respective sentences, if the same be unexpired.

XXXVII. And be it further enacted by the authority aforesaid, That whenever, by reason of the Penitentiary being on fire, or any building contiguous or near the said Penitentiary being on fire, there shall be reason to apprehend, that the Convicts confined therein may be injured or endangered by such fire, the Warden of said Penitentiary may, in his discretion, remove such Convicts to some safe and convenient place, and there confine them so long as it may be necessary to avoid such danger.

XXXVIII. And be it further enacted by the authority aforesaid, That it shall be the duty of the Warden of the Penitentiary to receive into the said Penitentiary, and safely to keep therein, subject to the discipline of the said Penitentiary, any criminal convicted of any offence against our Sovereign Lord the King, sentenced to imprisonment therein by any Court of the Province, until such sentence be executed, or until such Convict shall be discharged by due course of law, the Province supporting such Convict, and paying the expenses attendant upon the execution of such sentence, except that the District in which such conviction shall take place shall defray the expense of conveying such Convict to the Penitentiary.

XXXIX. And be it further enacted by the authority aforesaid, That in case any Prisoner shall escape or attempt to escape out of the custody of any Officer to whom such Prisoner may have been so committed, he shall be liable to the like punishment as if he had been committed by virtue of a commitment or conviction under the authority of a Court of Justice, and the Officer shall be liable to the like penalties and punishment for any neglect or violation of duty in respect to the custody of such Prisoner, as if such Prisoner had been committed by virtue of a commitment or conviction under the authority of a Court of Justice.

XL. And be it further enacted by the authority aforesaid, That the Warden of the Penitentiary, and all persons actually employed in said Penitentiary, shall be exempted during their continuance in office from serving on Juries and from Militia duty, and also from serving as Town or Parish Officers.

XLI. And be it further enacted by the authority aforesaid, That no spirituous or fermented liquors shall on any pretence whatever be sold within the said Penitentiary, nor shall any kind of spirituous or fermented liquors be brought into the Penitentiary, for the use of any Convict confined therein, without a written permit, signed by the Physician of the said Penitentiary, specifying the quantity and quality which may be furnished to any Prisoner, for whom, and the time when the same may be furnished, which permit shall be delivered to and kept by the Keeper of the Penitentiary.

XLII. And be it further enacted by the authority aforesaid, That the sums necessary to pay the salaries mentioned in this Act, shall be paid by the Receiver General of the Province to the Warden, in discharge of such Warrantor Warrants as may be issued for that purpose by the Governor, Lieutenant Governor, or Person Administering the Government of this Province for the time being, and shall be accounted for to His Majesty through the Lords Commissioners of His Treasury, in such manner and form as His Majesty, His Heirs or Successors shall be graciously pleased to direct.

Form of Bond.

“Know all Men by these presents, that we, A.B., Warden of the Provincial Penitentiary erected in the Midland District; C.D., of ____, in the ____; and E.F., of ____, in the ____, are held and firmly bound to our Sovereign Lord the King, His Heirs and Successors, in the sum of ____, that is to say, the said A.B. in the sum of ____, and the said C.D. and E.F. in the sum of ____, each, to be paid to our Sovereign Lord the King, His Heirs and Successors, for which payment to be well and truly made, we bind ourselves severally and respectively, and each of us, His Heirs, Executors and Administrators, firmly by these presents, sealed with our seals, and dated this ____ day of ____, in the year of our Lord ____.”

The condition of this obligation is such, that if the above bounden A.B. shall faithfully demean himself in his said office of Warden, according to Law, and shall duly account for all

monies that may come into his hands by virtue of his said office, then this obligation to be void, otherwise to remain in full force and virtue.

Signed and delivered in presence of _____

L.S.

L.S.

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