

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 28

An Act for establishing Prisons for Young Offenders — for the better government of Public Asylums, Hospitals and Prisons, and for the better construction of Common Gaols. Assented to 10th June, 1857.

Whereas it may be of great public advantage that Prisons be provided, in which young offenders may be detained and corrected, and receive such instruction and be subject to such discipline, as shall appear most conducive to their reformation and the repression of crime: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. It shall be lawful for the Governor to cause to be erected or provided two Buildings, one to be situated in Lower Canada, and one in Upper Canada, to be used as Prisons for the confinement and reformation of such offenders, as are hereinafter specified; and so soon as the said buildings are completed and fitted for that purpose, to cause the same to be declared by Proclamation to be Reformatory Prisons for the confinement of such offenders.
- II. It shall be lawful for the Governor to appoint for each of the said Prisons, a Warden, a Protestant Chaplain, a Roman Catholic Chaplain, a Surgeon and a Clerk, to hold office during pleasure.
- III. It shall be lawful for the Warden of each of the said Prisons, by and with the consent of the Inspectors to be appointed under this Act, to appoint such other Officers, Assistants and Servants as may be necessary for the service and discipline of the Prison, and at pleasure to remove the same and to appoint others in their room.
- IV. The Inspectors to be appointed under this Act shall have and perform the same powers and duties, with respect to each of the said Reformatory Prisons, as are vested in or to be performed by the Inspectors of the Provincial Penitentiary with respect to the same, under an Act of the Provincial Parliament, passed in the session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act for the better management of the Provincial Penitentiary*, except in so far as the said powers and duties may be altered by this Act; and any one of the Inspectors appointed under this Act shall have and perform the same powers and duties, with respect to such Reformatory Prisons (except as aforesaid) as are vested in one Inspector by the said Act relating to the Provincial Penitentiary.
- V. So soon as the said buildings shall be declared by Proclamation to be Reformatory Prisons as aforesaid, it shall be lawful for any Court of Criminal Jurisdiction in this Province, in its discretion, to sentence any person, male or female, whose age at the time of trial shall not in the opinion of such Court exceed the age of twenty-one years, and who shall have been convicted before such Court of any offence now punishable or which may be made punishable by imprisonment in the Provincial Penitentiary, to be imprisoned in one of the said Reformatory Prisons instead thereof; Provided always,

that in no case shall the sentence be less than six calendar months or more than five years confinement in any such Reformatory Prison, and in every case when the length of imprisonment is fixed by law to be more than five years, then such imprisonment shall be in the Penitentiary; And provided; always, that persons so convicted in Lower Canada shall be sentenced to imprisonment in the Reformatory Prison for Lower Canada, and those convicted in Upper Canada, to imprisonment in the Reformatory Prison for Upper Canada.

VI. Whenever, after the, said Buildings shall be declared by Proclamation to be Reformatory Prisons as aforesaid, any person under the age of sixteen years shall be convicted of any offence punishable by law on summary conviction, and shall be thereupon sentenced and committed to prison in any Common Gaol, then and in every such case which may occur in Lower Canada, it shall be lawful for any Judge of the Superior Courts of Lower Canada, and in every such case occurring in Upper Canada it shall be lawful for any Judge of any of the Superior Courts of Upper Canada, and for any Judge of any County Court (in any case occurring within his County,) to examine and enquire into the circumstances of such case and conviction, and to direct such offender to be sent, either forthwith, or at the expiration of his sentence, to the Reformatory Prison for that section of the Province within which such conviction was had, to be there detained for a period of not less than six months and not exceeding two years. And such offender shall be liable to be detained pursuant to such direction; Provided always that no offender shall be directed to be so sent and detained as aforesaid, unless the sentence of imprisonment to the Common Gaol as aforesaid, shall be for fourteen days at the least; Provided also that the Governor may at any time order any such offender to be discharged from such Reformatory Prison.

VII. It shall be lawful for the Governor, at any time in his discretion, to cause any convict in the Provincial Penitentiary whose age may appear to the Inspectors not to exceed the age of twenty-one years, to be transferred to the Reformatory Prison for that section of the Province within which such convict had been tried and convicted, for the remainder of the term of imprisonment for which such convict had been sentenced.

VIII. It shall be lawful for the Governor, in his discretion, at any time to transfer any offender from one of the said Reformatory Prisons to the other, and at pleasure to re-transfer such offender.

IX. It shall be lawful for the Governor at any time, on report of the Inspectors, in his discretion, to order any offender sentenced under the fifth section of this Act, to be renewed from either of the said Reformatory Prisons, as incorrigible; and in every such case, the offender shall be liable to be confined in the Provincial Penitentiary for the remainder of the term of imprisonment for which such convict had been originally sentenced in such Reformatory Prison.

X. The Warden of a Reformatory Prison established under this Act, shall have and perform the same powers and duties, with respect to such Prison, as are vested in the Warden of the Provincial Penitentiary by law, except in so far as they may be altered by this Act or by the rules made under the next succeeding section.

XI. The Inspectors shall be empowered, from time to time, to frame rules for the government and regulation of the said Reformatory Prisons respectively, and for the discipline of the offenders imprisoned therein, and to submit such rules to the Governor, and upon such rules being approved by him, they shall thereupon be enforced in such Prisons respectively; and all such rules shall be laid before Parliament within six weeks after the then next meeting of Parliament.

XII. It shall be lawful for the Governor to cause to be procured and provided, surrounding or adjacent to each of the Reformatory Prisons, a tract of land fit for agricultural purposes not exceeding two hundred acres for each Prison, and to cause the same to be securely inclosed, and each Prison shall be held to include all the land contained within such inclosure.

XIII. It shall be lawful for the Governor at any time hereafter should he deem it expedient, to cause to be procured and fitted up, at or below the City of Montreal, a Hulk or Receiving Ship, in every respect fit for Ocean Service, and to appoint a Captain and other Officers thereto, and from time to time to cause to be transferred by Warrant, from either of the Reformatory Prisons,, such offenders as may desire to embrace a seafaring life, and¹ as the Governor may think fit so to transfer; and such Hulk shall be held to be a Reformatory Prison and to be subject to the provisions of this Act relating to Reformatory Prisons, so far as they can be made applicable thereto; and the Captain so to be appointed shall be the Warden of the same, and have and perform all the powers and duties incident to that Office.

XIV. And whereas it is expedient to establish a uniform system for the government and inspection of Public Asylums, Hospitals and Prisons, and to provide for the better construction of the Common Gaols of this Province: Therefore, it is further enacted as follows:

It shall be lawful for the Governor to appoint five fit persons to be Inspectors of all Public Asylums, Hospitals, Common Gaols and other Prisons in this Province, and to appoint one of such persons to be their Chairman, and the said Inspectors shall; hold office during pleasure.

XV. The said Inspectors shall hold their meetings as a Board, at such place as may from time to time be appointed by the Governor — the Chairman shall preside at such Board — the Chairman and any two Inspectors shall constitute a *Quorum* at their meetings and for all purposes whatsoever — the Chairman at such Board shall have a right to vote as an Inspector, and in case of an equality of votes shall also have a casting vote — and he shall keep a regular minute of the proceedings of each meeting and sign the same. Provided always, that in case of the absence of the Chairman, any one of the Inspectors may be appointed by the Governor to act in his stead during such absence.

XVI. The said Inspectors shall have and perform all the powers and duties which are vested in or to be performed by the Inspectors of the Provincial Penitentiary under the Act of the Provincial Parliament relating to the Provincial Penitentiary hereinbefore mentioned; and any one of the Inspectors appointed under this Act, shall have and perform the same powers and duties which are vested in one Inspector under the said recited Act; and the said Inspectors shall also have and perform all the powers and duties which are vested in or to be performed by the Commissioners of the Provincial Lunatic Asylum, at Toronto, under an Act of the Provincial Parliament, passed in the sixteenth year of Her Majesty's Reign, intituled, *An Act for the better management of the Provincial Lunatic Asylum at*

Toronto, and all the provisions of the said recited Acts in relation to the Inspectors of the Provincial Penitentiary, and the Commissioners of the Provincial Lunatic Asylum at Toronto, shall be applicable to the Inspectors to be appointed under this Act.

XVII. From and immediately after the first appointment of Inspectors under this Act, the powers and duties of the Inspectors under the said Act relating to the Provincial Penitentiary, and of the Commissioners appointed under the above mentioned Act relating to the Provincial Lunatic Asylum at Toronto, shall cease and determine. And the Medical Superintendent and Bursar of the said Asylum shall thereafter make to the said Inspectors the Annual report now required to be made by them respectively to the Governor and Legislature under the said Act; and such Reports shall be transmitted by the said Inspectors to the Governor, together with the Annual Report of such Inspectors,

XVIII. The Inspectors shall so long as any appropriation of money shall be made by the Legislature in aid of the Lunatic Asylum at Beauport near Quebec, visit such Asylum as often as may be determined upon by them or ordered by the Governor, and at least twice in the year, and shall in their Annual Report hereinafter provided for, fully report on the State and Management of such Asylum and on the condition of its inmates.

XIX. The Inspectors shall visit, and inspect, either singly or together as may be determined upon by them, or as may be ordered by the Governor, every Gaol, House of Correction and Prison or place kept or used for the confinement of persons, in any part of this Province, other than the said Provincial Penitentiary and Reformatory Prisons, as often as may be determined upon by them or ordered by the Governor, and at least twice in the year; and the said Inspectors or Inspector shall have authority to examine, any person holding any office or receiving any salary or emolument in any such place of confinement as aforesaid, and to call for and inspect all books and papers relating to such place of confinement, and to enquire into all matters concerning the said place of confinement; and every Inspector singly making an inspection as aforesaid shall make a separate and distinct report, in writing, of the state of every place, of confinement so visited by him to the Board of Inspectors.

XX. From and after the time when this Act shall come into force, every Gaol that shall be erected in this Province shall be made and built according to a plan which shall be approved of by the Inspectors and sanctioned by the Governor; and no Gaol that shall be built in any District in Lower Canada or County in Upper Canada, otherwise than according to a plan approved and sanctioned as aforesaid, or that shall not after its completion receive the approval of the said Inspectors, shall be deemed to be in law the Gaol of such District or County.

XXI. Every District Gaol in Lower Canada and County Gaol in Upper Canada now created, or which may be in course of erection when this Act shall come into force, shall be inspected as speedily as may be convenient by the said Inspectors for the purpose of ascertaining whether such Gaol satisfies the requirements of the next succeeding section of this Act, and they shall report thereon to the Governor, and in Upper Canada transmit a copy of such Report to the Warden of every County in which such Gaol is situate, or in the course of erection as aforesaid.

XXII. The Inspectors, before deciding in any case upon the plan of a Gaol most proper to be adopted, or upon any alterations or additions they may propose in their Report to be made according to the next preceding section of this Act, shall take into consideration the nature and extent of the ground on which such Gaol has been or is to be built, its relative situation to any streets and buildings and to any river or other water; its comparative elevation and capability of being drained; the materials of which it has been or is to be composed; the necessity of guarding against cold and damp, and of providing properly for ventilation; the proper classification of persons, having respect to their age, sex, and the cause of their confinement; the best means of ensuring their safe custody without the necessity of resorting to severe treatment; the due accommodation of the keeper of the Gaol so that he may have ready access to the prisoners and may conveniently oversee them; the exclusion of any intercourse with persons without the walls of the building; the prevention of nuisances from whatever cause; the combining provision as well for the reformation of convicts so far as may be practicable, as for their employment, in order that the Common Gaols may really serve for places of correction; the admission of prisoners to air and exercise without the walls of the building; and the enclosure of the yard and premises with a secure wall.

XXIII. Within seven months after this Act shall come into force, it shall be the duty of the Warden of each County in Upper Canada, to call a special meeting of the County Council; and such County Council shall thereupon appoint a special Committee to confer with the Inspectors and to arrange with them any alterations and additions that may be deemed necessary to make their County Gaol satisfy the requirements of the twenty-first section of this Act, and to report the same to the said County Council; and in case the Inspectors and such Committee do not agree upon the alterations or additions, the matter then shall be referred to the Governor in Council to decide between them, and thereupon the decision shall be reported to the County Council; and it shall be the duty of the said County Council in either case, by By-law, to order and provide for the making of the said alterations and additions, and for the appropriation of any money that, may be required for that purpose.

XXIV. It shall be the duty of each County Council in Upper Canada, and they are hereby required and empowered to levy and raise such a sum by direct taxation as shall be sufficient to make the said alterations and additions, or at their option to borrow the money so required, under a By-law to be passed for that purpose, for such number of years as they may deem expedient; in such By-law there shall be imposed and settled a special rate over and above and in addition to all rates whatsoever, to be levied in each year for the payment of the said loan, and sufficient, according to the last assessment returns before the passing of such By-law, to pay the whole amount of the said loan and interest within the period fixed by the said By-law for the payment thereof.

XXV. The Inspectors and the said Special Committee of the County Council shall, in arranging the necessary alterations and additions as aforesaid, have due regard to the plan of the Gaol as they shall find it, and to the ability of the County to meet the expense thereof, and shall make as few and as inexpensive alterations and additions as in their opinion the requirements of this Act will allow.

XXVI. In order to aid the said County Councils in Upper Canada in making the said alterations and additions in the Gaols of their respective Counties, it shall be lawful for the Governor to pay from and out of the "Upper Canada Building Fund" to the Treasurer of each County, a sum not exceeding one

half of the expense of the same, and not exceeding the sum of one thousand five hundred pounds for any one County.

XXVII. The said Inspectors shall, as soon as may be convenient, frame a set of rules and regulations for the government of the Common Gaols of this Province, extending to the maintenance of the prisoners in regard to diet, clothing, bedding and other necessaries; their employment; medical attendance; religious instruction; the conduct of the prisoners and the restraint and punishment to which they may be subjected; and also to the treatment and custody of the prisoners generally, and to the whole internal economy and management of the Gaol, and all such mailers connected therewith as shall be thought by them expedient; which rules and regulations shall be submitted to the Governor for his approval and confirmation: Provided always, that nothing herein contained shall be held to prevent the County Councils in Upper Canada from making such special regulations as the peculiar circumstances of their respective Gaols and localities may in their opinion require, — such special regulations not being inconsistent with the provisions of this Act, or with the general rules and regulations so to be made by the inspectors and approved by the Governor, as aforesaid.

XXVIII. An Asylum shall be erected or provided in the vicinity of the Provincial Penitentiary and within the limits of the City or Township of Kingston, for the reception of Lunatic Convicts, to be called the Criminal Lunatic Asylum; and it shall be lawful for the Governor to appoint thereto a Medical Superintendent and other officers with the same powers and duties as those possessed and to be performed by similar officers of the Provincial Lunatic Asylum at Toronto, according to the provisions of the above recited Act relating to such Asylum at Toronto; and the Inspectors to be appointed under this Act shall have and perform the same powers and duties with respect to the said Criminal Lunatic Asylum as are vested in them by virtue of this Act with respect to the said Asylum at Toronto.

XXIX. Whenever it shall be certified by the Surgeon of the Provincial Penitentiary and the Medical Superintendent of the said Criminal Lunatic Asylum, to the Warden of the Penitentiary, that any convict confined therein is insane and that it is desirable that such convict should be removed therefrom to the Lunatic Asylum, it shall be lawful for the Warden to cause such convict to be conveyed to the said Criminal Lunatic Asylum; and such convict shall be received into the said Asylum and there safely kept until he shall be removed to the said Penitentiary; and if at any time before the expiration of his term of imprisonment, it shall be certified by the Medical Superintendent of the said Asylum that such convict has recovered his reason and is in a fit state to be remanded to the Penitentiary, then it shall be the duty of the Warden to cause such convict to be re-conveyed to the said Penitentiary and kept therein; and the authorities of the said Asylum and the person appointed to convey any convict to the said Asylum, or to reconvey him to the said Penitentiary, shall have the same power and authority to detain such convict or to re-take him or her in case of an escape, and to command the assistance of any persons, in retaking him or her, or in preventing such escape, as the Warden or other Officers of the Penitentiary, or any person appointed by a Sheriff to convey any convict to the Penitentiary, after being sentenced to imprisonment therein would have in the like case; and if the term of imprisonment of any convict shall expire while he is detained in the said Asylum, he may, nevertheless, be detained therein until discharged as sane, or delivered to his friends under a warrant from the Governor to that effect.

XXX. Notwithstanding any thing contained in the thirty-ninth section of the said Act relating to the Provincial Penitentiary, the body of any Convict who may die whilst confined in the said Penitentiary, and which shall not be claimed by the friends or relations of the deceased, may be delivered to an Inspector of Anatomy, duly appointed under the Act of the Provincial Parliament, passed in the seventh year of Her Majesty's Reign, chaptered five.

XXXI. The said Criminal Lunatic Asylum shall, unless otherwise specially ordered by the Governor, be made and used as the Lunatic Asylum, or place for the safekeeping of persons liable to be confined or kept in custody under the first, second and fourth sections of the Act passed in the session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled: *An Act to authorise the confinement of Lunatics in canes where their being at large maybe dangerous to the public.*

XXXII. It shall be the duty of the Inspectors either singly or together whenever required to do so by the Governor, and at least once in the year, to visit, examine and report to him upon the state and management of every Private Lunatic Asylum established under the provisions of the Act passed in the session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled: *An Act for the regulation of Private Lunatic Asylums*, and upon the condition of its inmates; and it shall be lawful for the Governor after receipt of any Report of the Inspectors, by an Instrument under his hand and seal, to suspend or revoke the license granted under the said Act.

XXXIII. In case any other Lunatic Asylum or Asylums, or any Asylum for Idiots or for the Deaf, Dumb or Blind, shall hereafter be erected at the public expense, it shall be lawful for the Governor to appoint to each of them a Medical Superintendent and other Officers, with the same powers and duties as those possessed and to be performed by similar Officers of the Provincial Lunatic Asylum at Toronto; and the Inspectors appointed under this Act shall have and perform the same powers and duties with respect to the said Asylums in this section mentioned respectively as are vested in them by virtue of this Act with respect to the said Lunatic Asylum at Toronto.

XXXIV. It shall be the duty of the Inspectors either singly or together, as often as maybe determined upon by them, or ordered by the Governor, and at least twice in the year, to visit, examine and report to him upon the state and management of every Hospital or other Benevolent Institution supported wholly by grant of public Money, or by Money levied under authority of Law.

XXXV. It shall be the duty of the Inspectors either singly or together, whenever required by the Governor so to do to visit, examine and report to him upon the state, management and condition of every Hospital or other Benevolent Institution, supported in part by grant of public money, and in case of refusal of admission into the same for the purpose of inspection, to report forthwith such refusal and the circumstances attending the same to the Governor.

XXXVI. The said Inspectors shall make an Annual Report to the Governor on or before the tenth day of February in each year, which Report shall, with respect to the Provincial Penitentiary and the Reformatory Prisons, comprise all the particulars and documents required by the tenth sub-section of the twelfth-section of the said Act relating to the Provincial Penitentiary, and shall also contain a full and accurate report on the state, condition and management of the several Asylums, Hospitals, Gaols

and Institutions under their inspection, and inspected by them, or any of them, during the preceding year, together with such suggestions for the improvement of the same as they may deem necessary or expedient.

XXXVII. All actions, suits and prosecutions to be commenced against any person or persons for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise or afterwards.

XXXVIII. In the construction of this Act, the word "County" shall be held to mean "County or Union of Counties."

XXXIX. In citing, pleading or otherwise referring to this Act, it shall in all cases whatsoever be sufficient to use the expression "The Prison Inspection Act, 1857," or words of similar import.

XL. This Act shall come into force from and after the first day of July next.