

THE PUNJAB BORSTAL ACT, 1926

(Punjab Act XI of 1926)

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(Punjab Act XI of 1926)

[27 August 1926]

An Act to make provision for the establishment and regulation of Borstal Institution in the Punjab and for the detention and training of adolescent offenders therein

Preamble.— WHEREAS it is expedient to make provision for the establishment and regulation of Borstal Institutions in the Punjab and for the detention and training of adolescent offenders therein; and whereas the previous sanction of the Governor-General under sub-section(3) of section 80-A of the Government of India Act has been obtained;

It is hereby enacted as follows:-

1. Short title, extent and commencement.— (1) This Act may be called the Punjab Borstal Act, 1926.
(2) It extends to the Punjab.

(3) It shall come into force on such date as the [Provincial Government] may by notification appoint in this behalf.

2. Definitions.— In this Act unless there is anything repugnant in the subject or context,—

(1) “Borstal Institution” means a place in which offenders may be detained under this Act and given such industrial training and other instruction and subjected to such disciplinary and moral influences as will conduce to their reformation;

(2) “detained” means detained in, and “detention” means “detention” in a Borstal Institution.;

(3) “inmate” means any person ordered to be detained;

(4) “offence” means—

(i) an offence punishable with transportation or rigorous imprisonment under the [Pakistan] Penal Code ther than—

(a) an offence punishable with death;

(b) an offence punishable under Chapter V-A or Chapter VI of the said Code;

(ii) an offence punishable with imprisonment under the Public Gambling Act, 1867;

(iii) an offence punishable with imprisonment under the Opium Act, 1878

(iv) an offence punishable with imprisonment under the Punjab Excise Act, 1914 (5) “officer” means an officer of a Borstal Institution appointed in such manner as may be prescribed;

(6) “prescribed” means prescribed by rules made by the [Provincial Government] under the provisions of this Act;

(7) “security for good behaviour” means security for good behaviour otherwise than for political activities under section 109 or section 110 of the Code of Criminal Procedure, 1898;

(8) “Superintendent” means a Superintendent of a Borstal Institution appointed in such manner as may be prescribed.

3. Establishment of Borstal Institutions.— For the purposes of this Act the [Provincial Government] may establish one or more Borstal Institutions.

4. Appointment of Director of Borstal Institutions, officers and visiting committees.— (1) The [Provincial Government] shall appoint any person not being a police officer, to be Director of Borstal Institutions, and he shall exercise, subject to the orders of [Provincial Government], general control and superintendence of all Borstal Institutions.

(2) For every Borstal Institution the [Provincial Government] shall appoint a Superintendent, and such other officers as may be necessary.

(3) For every Borstal Institution a visiting committee shall be appointed in such manner as may be prescribed.

5. Powers of courts to pass a sentence of detention in a Borstal Institution in the case of convict under twenty-one years of age in lieu of transportation or rigorous imprisonment.— (1) When any male person less than twenty-one years of age is convicted of an offence by a court of sessions, a Magistrate specially empowered under section 30 of the Code of Criminal Procedure, 1898, or a Magistrate of the first class, or is ordered to give security for good behaviour and fails to give such security, and when by reason of his criminal habits or tendencies or associations with persons of bad character it is expedient in the opinion of the Judge or Magistrate, that he should be detained, such Judge or Magistrate may, in lieu of passing a sentence of transportation or rigorous imprisonment, pass an order of detention for a term which shall not be less than two years and shall not exceed seven years when the orders passed by a court of sessions or a Magistrate

pecially empowered under section 30 of the Code of Criminal Procedure, 1898, and shall not be less than two years nor exceed three years, when the order is passed by a Magistrate of the first class not so empowered.

(2) When any Magistrate not empowered to pass such order is of opinion that an offender convicted by him is a person in respect of whom such order should be passed in accordance with the provisions of sub-section (1) he may, without passing any sentence, record such opinion and submit his proceedings and forward the accused to the District Magistrate whom he is subordinate.

(3) The District Magistrate to whom the proceedings are so submitted may make such further enquiry (if any) as he may deem fit and pass such order for the detention of the offender or such other sentence or order, as he might have passed if the trial had been held by him from its commencement.

6. Special powers of District Magistrate.— When any male person less than twenty-one years of age has been sentenced for an offence by a Magistrate to rigorous imprisonment, or when ordered by a Magistrate to give security, for good behaviour has failed to give such security, and has been committed to or confined in prison and no appeal has been preferred against such sentence or order within the time prescribed by law and when by reason of such person's criminal habits or tendencies or association with persons of bad character it is expedient, in the opinion of the District Magistrate, that he should be detained, the District Magistrate may order that such persons shall in lieu of undergoing imprisonment be detained for a period not less than two years nor more than three years.

7. Detention of prisoners confined in the Lahore Borstal Jail.— If it appears to the [Provincial Government] that any male person, less than twenty-one years of age, who, having been sentenced to rigorous imprisonment for an offence or having been committed to or confined in prison for failing to give security for good behaviour, is at the time of the commencement of this Act confined in the Lahore Borstal Jail, should for the reasons described in sub-section (1) of section 5 be detained, the [Provincial Government] may direct that he be detained for a period not exceeding the residue of his sentence of the period for which security was required, as the case may be, provided that such order shall be subject as regards the period of detention to any order passed on appeal against or revision of the sentence or order of commitment or confinement in prison.

8. Power of Superintendent of Jail to present prisoner less than 21 years of age before District Magistrate for detention in a Borstal Institution.— Whenever it appears to the Superintendent of a Jail that any male person less than twenty-one years of age sentenced to transportation or rigorous imprisonment for an offence or committed to or confined in prison for failing to give security for good behaviour should for the reasons described in sub-section(1) of section 5 be detained, he shall cause such prisoner to be produced before the District Magistrate in whose jurisdiction the Jail is situated, and if the District Magistrate after making such enquiry as he may deem proper or as may be prescribed is satisfied that the prisoner should for the reasons described in the said sub-section be detained, he may order the prisoner to be removed from jail and detained for a period equal to the unexpired term of the transportation or imprisonment to which he was sentenced, or of the period for which security was required from him, as the case may be.

9. When action may not be taken under section 8.— No order shall be made under the provisions of section 8—

- (i) until the time allowed by law for the prisoner to appeal has expired or if an appeal has been preferred until such appeal has been finally decided; or
- (ii) if an application made on appeal or otherwise to have the sentence altered into an order of detention, has been rejected by an Appellate Court or the High Court; or
- (iii) in the case of any person who has been sent to a Reformatory School in accordance with the provisions of the Reformatory Schools Act, 1897.

10. Application of the Code of Criminal Procedure, 1898 and the

[* * *] Limitation Act, 1908 and provisions for appeal and revision.— (1) Subject to the provisions of sub-section (2) of this section the provisions of the Code of Criminal Procedure, 1898, relating to appeal, reference and revision and Articles 154 and 155 of the [* * *] Limitation Act, 1908, shall apply in the case of an order of detention passed under section 5 as if the order has been a sentence of imprisonment for the same period as the period for which detention was ordered.

(2) Notwithstanding anything contained in section 423 of the Code of Criminal Procedure, 1898, when a person who at the time of his conviction was less than twenty-one years of age has been convicted of an offence or when such person on being ordered to furnish security for good behaviour has failed to furnish such security, an Appellate Court or the High Court in the exercise

of its powers of revision, may in pursuance of sub-section (1) and the provisions of the Code of Criminal Procedure, 1898, and after making such inquiry as it may deem fit, alter a sentence of imprisonment or an order of commitment to prison under section 123 of the Code of Criminal Procedure to an order of detention, if for reasons described in sub-section (1) of section 5, it considers such alteration expedient, and may alter an order of detention to a sentence of imprisonment or an order of commitment to prison under section 123 of the Code of Criminal Procedure, as the case may be, provided that the sentence of imprisonment, order of commitment, or order of detention, shall not be in excess of the powers of the trial Magistrate or Court.

(3) Any person who has been ordered to be detained in a Borstal Institution under the provisions of section 6 for a period to expire after the term of imprisonment to which he was sentenced would expire had the orders not been passed may, subject to the provisions of sub-section (5), appeal to the Sessions Judge, and the Sessions Judge may either confirm the order or set it aside and restore the sentence of imprisonment or if the order is for more than two years reduce it to a term not shorter than two years nor shorter than the residue of imprisonment to which the offender was sentenced.

(4) Any person ordered by a Sessions Judge under the provisions of sub-section (3) to be detained for a period to expire after the term of imprisonment to which he was sentenced would expire had such order not been passed, may, subject to the provisions of sub-section (5), appeal within thirty days of the order to the High Court and the High Court may pass any such order as the Sessions Judge might have passed.

(5) An appeal shall not lie under sub-section (3) or sub-section (4) against a conviction or on any finding of fact but only on the ground that the order appealed against is illegal or unduly severe.

11. No person who has been once detained to be detained again.— No person who has been previously detained for the whole period prescribed in an order of detention or who has been transferred to jail under section 20 of this Act, shall again be ordered to be detained.

12. Release on furnishing security.— Any person detained for failure to furnish security shall be released on furnishing such security.

13. Enquiry to be made regarding the age of the offender before the passing of an order of detention.— (1) Before passing an order of detention under this Act the Magistrate, District Magistrate or Court, as the case may be, shall enquire or cause enquiry to be made into the question of the age of the offender, and after taking such evidence (if any) as may be deemed necessary or proper shall record a finding thereon.

(2) A similar enquiry shall be made and finding recorded by every Magistrate not empowered to pass an order of detention under this Act before submitting his proceedings and forwarding the accused to the District Magistrate as required by sub-section (2) of section 5 of this Act.

14. Magistrate to give grounds of his opinion before ordering detention.— When any Magistrate, District Magistrate or Court orders an offender to be detained, he or it, as the case may be shall record the grounds of his or its opinion that it is expedient that the offender be detained.

15. Power to release on license.— Subject to any general or special directions of [Provincial Government], the visiting committee with the sanction of the Director of Borstal Institutions, may at any time after the expiration of one-third of the period of detention, or of two years, whichever is shorter, if satisfied that the inmate is likely to abstain from crime, and lead a useful and industrious life, by license permit him to be discharged from the supervision or authority of any servant of the State] or (secular) institution or person or religious society (professing the same religion as the inmate) named in the licence who may be willing to take charge of him. A license granted under this section shall be in force until the term for which the inmate was ordered to be detained has expired unless sooner suspended, revoked or forfeited.

16. Absence under license to be counted towards period of detention.— The time during which an inmate is absent under license from a Borstal Institution shall be reckoned as part of the period of detention.

17. Form of license.— Every license granted under the provisions of section 15 shall be in such form and shall contain such conditions as the [Provincial Government] may, by general or special order, direct.

18. Suspension and revocation of licenses.— Subject to any general or special directions of the [Provincial Government], a license granted under section 15 may be suspended for a period not exceeding three months by the Superintendent of a Borstal Institution or revoked at any time by the visiting committee on the recommendation of the Director of Borstal Institutions. Where the license of any inmate has been suspended or revoked he shall return to the Borstal Institution, and if he fails to do so he may be arrested without warrant and taken to the institution.

19. Penalty for escape.— If any inmate escapes from a Borstal Institution before the expiry of the period for which he was ordered to be detained or if any inmate absent on license from a Borstal Institution escapes from the supervision or authority of any Government officer or (secular) institution or person or religious society in whose charge he was placed or fails on the suspension or revocation of his license to return to the Borstal Institution, he may on conviction by a Magistrate be punished with imprisonment of either description for a term which may extend to two years or with fine or with both, and his license shall be forfeited with effect from the date of his escape or failure to return, as the case may be.

An offence under this section shall be deemed to be a cognizable offence within the definition of that term in the Code of Criminal Procedure, 1898.

20. Incurables.— Where an inmate is reported to the [Provincial Government] by the visiting committee to be incurable or to be exercising a bad influence on the other inmates of the institution or is convicted under section 19 of this Act, or is reported by the Superintendent to have committed an offence which has been declared to be a major Borstal Institution offence by rules made by the [Provincial Government] in pursuance of the provisions of sub-section (14) of section 34 of this Act, the [Provincial Government] may commute the residue of the term of detention to such term of imprisonment of either description not exceeding such residue as the [Provincial Government] may direct, and may order the transfer of the inmate to any jail in the Punjab in order to complete the said term of imprisonment.

21. Inmates appointed officers to be public servants.— Inmates who have been appointed as officers shall be deemed to be public servants within the definition of that term in the [Pakistan] Penal code.

22. Extra-mural custody, control and employment to inmates.— An inmate when being taken to or from any Borstal Institution in which he may be lawfully detained or whenever he is working outside or is otherwise beyond the limits of any such Borstal Institution in or under the lawful custody or control of an officer belonging to such Borstal Institution shall be deemed to be under detention and shall be subject to all the same incidents as if he were actually in a Borstal Institution.

23. Penalty for introduction or removal of prohibited articles into or from Borstal Institutions and communication with inmates.— Whoever, contrary to any rule under section 34, introduces or removes, or attempts by any means whatever to introduce or remove, into or from any Borstal Institution, or supplies or attempts to supply to any inmate outside the limits of such Institution any prohibited article,

and every officer of a Borstal Institution who, contrary to any such rule, knowingly suffers any such articles to be introduced into or removed from any Borstal Institution to be possessed by any inmate, or to be supplied to any inmate outside the limits of Borstal Institution,

and whoever contrary to any such rule, communicates or attempts to communicate with any inmate,

and whoever abets any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to fine not exceeding two hundred rupees or to both.

24. Power to arrest for offences under section 23.— When any person, in the presence of any officer of a Borstal Institution commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

25. Publication of penalties.— The Superintendent shall cause to be affixed, in a conspicuous place outside the Borstal Institution, a notice in English and [Urdu] setting forth the acts prohibited under section 23 and the penalties incurred by their commission.

26. Officers-in-charge of Borstal Institutions to detain persons duly committed to their custody.— The officer-in-charge of a Borstal Institution shall receive and detain all persons duly committed to his custody under this Act according to the directions contained in the order by which such person has been committed or until such person is discharged or removed in due course of law.

27. Officers-in-charge of Borstal Institutions to return orders, etc., after execution or discharge.— The officer-in-charge of a Borstal institution shall forthwith after the execution of every such order as aforesaid or after the discharge of the person committed thereby, return such order to the Magistrate, District Magistrate or Court by which the same was issued or made, together with a certificate endorsed thereon and signed by him showing how the same has been executed or why the person committed thereby has been discharged from detention before the execution thereof.

28. Powers for officers-in-charge of Borstal Institutions to give effect to orders of certain courts.— (1) Officers-in-charge of Borstal Institutions may give effect to any order for the detention of any person passed or issued—

[(a) by any Court or Tribunal acting within or without Pakistan under the general or special authority of the Central or any Provincial Government;] or

(b) by any Court or Tribunal in [any [accessing] State]—

(i) [* * * * *

(ii) if the reception or detention [in the Punjab] of persons ordered to be detained by any such Court or Tribunal has been authorized by general or special order [by the Provincial Government]; or

[(c) by any other Court or Tribunal in any [accessing] State with the previous sanction of the Provincial Government in the case of each such order.]

(2) Where a Court or Tribunal [in an [accessing] State has passed an order which can not be executed without the concurrence of a [servant of the state], and such order has been considered on the merits and confirmed by any such officer specially authorized in that behalf, such order and any order issued in pursuance thereof, shall be deemed to be the order of Court or Tribunal acting under the authority of the [Central Government] [* * *].

29. Warrant of officers of such Courts to be sufficient authority.— An order under the official signature of an officer of such Court or Tribunal as is referred to in section 28 shall be sufficient authority for detaining any person, in pursuance of the order passed upon him.

30. Procedure where officer incharge of Borstal Institution doubts the legality of order sent to him for execution.— (1) Where an officer incharge of a Borstal Institution doubts the legality of an order sent to him for execution, or the competency of the person whose official seal or signature is affixed thereto to pass the order he shall refer the matter to the [Provincial Government] by whose order on the case he and all other public officers shall be guided as to the future disposal of the inmate.

(2) Pending a reference made under sub-section (1), the inmate shall be detained in such manner, and with such restrictions or mitigations as may be specified in the warrant or order.

31. Lunatic inmates, how to be dealt with.— (1) Where it appears to the [Provincial Government] that any person detained under any order is of unsound mind the [Provincial Government] may order his removal to lunatic asylum or other place of safe custody within the [Punjab], there to be kept and treated as the [Provincial Government] directs during the remainder of the term for which he has been ordered to be detained or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the inmate or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the [Provincial Government] that an inmate so kept and treated has become of sound mind, the [Provincial Government] shall, by a warrant directed to the person having charge of the inmate, if still liable to be detained, remand him to the Borstal Institution from which he was removed or to another Borstal Institution within the [Punjab] or, if he is no longer liable to be detained, order him to be discharged.

(3) The provisions of section 31 of the [* * *] Lunacy Act, 1912, shall apply to every person confined in a lunatic asylum under sub-section (i) after the expiration of the term for which he was ordered to be detained; and the time during which an inmate is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention which he may have been ordered to undergo.

(4) In any case in which a [Provincial Government] is competent under sub-section (1) to order the removal of an inmate to a lunatic asylum or other place of safe custody within the [Punjab], the [Provincial Government] may order his removal to any such asylum or place within any other Province or within, [any [acceding] State] by agreement with the [Provincial Government] of such other Province or with [that State or the Ruler thereof], as the case may be, and the provisions of this section respecting the custody, detention, remand and discharge of an inmate removed under sub-section (1) shall, so far as they can be made applicable, apply to an inmate removed under this sub-section.

32. Application to Borstal Institution of certain provisions of the Prisons Act, 1894; and the Prisoners Act, 1900.— Subject to the provisions of section 33 of this Act, the provisions of section 12 and Chapter XI of the Prisons Act, 1894 and of sections 35 to 50 (inclusive) and the rules made by the [Provincial Government],
[* * *] under section 51 of the Prisoners Act, 1900, shall apply as far as may be to Borstal Institutions established under this Act, and all reference to prisoners, imprisonment or confinement in the said sections, chapters and rules shall be construed as referring to inmates, Borstal Institutions and detention.

33. How punishment of whipping may be inflicted on an inmate.— For the purpose of punishing Borstal Institution offences, whipping shall be inflicted upon the palm of the hand only.

34. Power to make rules under the Act.— The [Provincial Government] may make rules after previous publication consistent with this Act—

- (1) for the regulation, management and classification of Borstal Institutions established under this Act and the description and construction of wards, cells and other places of detention;
- (2) for the regulation by number or otherwise of the inmates to be detained in each class of institution;
- (3) for defining the powers and duties of the Director of Borstal Institutions;
- (4) for the government of Borstal Institutions, and the appointment, guidance, control, punishment and dismissal of Superintendents and other officers employed in Borstal Institutions, and for the defining of their responsibilities, duties, disabilities and powers;
- (5) for the maintenance of records, and the preparation and submission of reports;
- (6) for the selection and appointment of inmates as inmate officers and their reduction and dismissal and for defining the responsibilities, duties and powers of such officers;
- (7) for the temporary detention of inmates until arrangement can be made for their admission to Borstal Institutions;
- (8) for the admission, removal and discharge of inmates and for the disposal of their effects during their detention;
- (9) for feeding, clothing and bedding of inmates;
- (10) for the custody, discipline, grading, treatment, education, training and control of inmates;
- (11) for the employment, instruction and control on inmates within or without Borstal institutions, the disposal of the proceeds of their labour;
- (12) for the treatment of sick inmates;
- (13) for classifying and prescribing the forms of education, instruction, employment and labour and regulating the periods of rest;
- (14) (i) for defining the acts, which shall constitute Borstal Institution offences;

- (ii) for determining the classification of Borstal Institution offences into major and minor offences;
 - (iii) for fixing the punishment admissible under this Act which shall be awardable for commission of Borstal Institution offences or classes thereof;
 - (iv) for declaring the circumstances in which acts constituting both a Borstal Institution offence and an offence under the [Pakistan] Penal Codemay or may not be dealt with as Borstal institution offence;
 - (v) for the award of marks and the shortening of period of detention;
 - (vi) for regulating the use of arms against any inmate or body of inmates and the use of fetters in the case of an outbreak or attempt to escape;
 - (vii) for defining the circumstances and regulating the conditions under which inmates in danger of death may be released;
 - (viii) for regulating the transfer from one part of [Pakistan] to another of inmates whose term of detention is about to expire;
 - (15) for defining articles the introduction or removal of which into or out of Borstal institutions without due authority is prohibited;
 - (16) for the classification and the separation of inmates;
 - (17) for rewards for good conduct;
 - (18) for regulating the transfer of inmates from one Borstal Institution to another or to an hospital or asylum and from a Borstal Institution to a prison or from a prison to a Borstal Institution;
 - (19) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in Borstal institutions;
 - (20) for regulating the transmission of appeals and petitions from inmates and their communications with their friends;
 - (21) for the appointment and guidance of visitors of Borstal institutions;
 - (22) for prescribing conditions on which licenses may be granted, suspended, revoked or cancelled;
 - (23) for the appointment, powers and control of parole officers;
 - (24) for defining the powers and duties of after-care societies and guardians and the conditions on which financial assistance may be given to them;
 - (25) for the appointment of visiting committees; and
 - (26) generally for all purposes consistent with this Act.
35. Powers of the Provincial Government to vary age limit, and to apply the Act to females.— The [Provincial Government] after giving by notification in the official gazette not less than three months' notice of his intention to do so may, by like notification—
- (1) direct that the provisions of section 5, 6 and 8 shall extend to persons under such age not less than twenty-one nor more than twenty-three as may be specified in the direction and upon such direction being notified, the said sections shall whilst the direction is in force have effect as if the specified age were substituted for “twenty-one”;

- (2) direct that the provisions of sections 5, 6 and 8 shall extend to females, and upon such direction being notified the said sections shall whilst the direction is in force have effect as if the word “male” were omitted.
- 36. Whipping not to be inflicted on females.— Notwithstanding the provisions of clause (2) of section 35 the punishment of whipping shall not at any time be inflicted upon a female for a Borstal institution offence.