

## GAOLS ACT 1928.

An Act to consolidate the Law relating to Gaols. 19 GEORGE V.  
No. 3690.  
[12th February, 1929.]

**B**E it enacted by the King's Most Excellent Majesty by and with the *Gaols Act 1915.*  
advice and consent of the Legislative Council and the Legislative  
Assembly of Victoria in this present Parliament assembled and by the  
authority of the same as follows (that is to say):—

1. This Act may be cited as the *Gaols Act 1928*, and shall come Short title  
commencement  
and division.  
into operation on a day to be fixed by proclamation of the Governor  
in Council published in the *Government Gazette*, and is divided into  
Parts as follows:—

PART I.—Constitution and Officers ss. 4–19.

PART II.—Treatment of Prisoners ss. 20–32.

PART III.—Employment of Prisoners ss. 33–36.

PART IV.—Offences ss. 37–54.

PART V.—Supplemental ss. 55–59.

2. The Acts mentioned in the First Schedule to this Act to the Repeal.  
First Schedule.  
*ib. s. 2.*  
extent thereby expressed to be repealed are hereby repealed. Such  
repeal shall not affect any proclamation appointment rule regulation or  
order made, or any sentence passed, or any direction or notice given, or  
any surety taken, or any certificate or warrant granted under the said  
Acts or any of them before the commencement of this Act.

3. In this or any other Act relating to gaols unless inconsistent Interpretation.  
*ib. s. 3.*  
with the context or subject-matter—

“Gaoler” means governor of gaol.

“Governor of gaol” includes the keeper or officer in charge of “Gaoler.”  
“Governor of  
gaol.”  
any gaol (other than the keeper or officer in charge of a  
police gaol) prison hulk penal establishment or person  
acting in such capacity.

“Inspector-General” means inspector-general of penal estab- “Inspector-  
General.”  
lishments.

“Prisoner” includes any person detained in custody in any “Prisoner.”  
gaol police gaol prison hulk or penal establishment irre-  
spective of the cause of such detention.

## PART I.—CONSTITUTION AND OFFICERS.

*Gaols Act 1916*  
s. 4.  
Governor in  
Council may  
appoint gaols &c.

4. All buildings erections houses enclosed places and premises hereafter to be erected built enclosed purchased enlarged or maintained at the public expense as and for public gaols prisons houses of correction and penal establishments within Victoria which are from time to time proclaimed by the Governor in Council by notice in the *Government Gazette* as such public gaols prisons houses of correction or penal establishments shall from and after the publication of such notice be severally deemed and taken to be the public gaols prisons houses of correction and penal establishments (hereinafter called "gaols") and shall be subject to the several provisions made for the regulation discipline management and care of the public gaols prisons houses of correction and penal establishments already erected (also hereinafter called "gaols") and of the prisoners confined within the same.

Governor in  
Council to have  
power to revoke  
proclamation  
notifying  
particular places  
as gaols &c.  
*Ib.* s. 5.

5. The Governor in Council shall have power from time to time by notice in the *Government Gazette* to revoke any proclamation heretofore made or which hereafter may be made under the last preceding section, or under any other authority in that behalf which has notified any building erection house enclosed place or premises to be a public gaol prison house of correction or penal establishment, and thereupon the building erection house enclosed place and premises referred to in such notice shall cease to be a public gaol prison house of correction or penal establishment accordingly.

Penal  
establishments.  
*Ib.* s. 6.

6. The Governor in Council may from time to time by notice in the *Government Gazette* appoint places in Victoria at which male offenders under any sentence of detention with hard labour on public works shall be detained and kept to hard labour; and may from time to time by a like notice alter or revoke any such appointment; and every place so appointed shall be deemed to be a penal establishment within the meaning of this Act.

Governor in  
Council may  
proclaim and  
revoke  
proclamation  
constituting  
"police gaols."  
*Ib.* s. 7.

7. The Governor in Council upon a certificate from the inspector-general that any lock-up is fit for the reception of prisoners whose sentences do not exceed thirty days may from time to time by notice in the *Government Gazette* proclaim any police lock-up so certified to be a "police gaol," and thereupon the provisions of the Acts then in force relating to gaols and the rules and regulations made thereunder shall apply to such "police gaols" as far as applicable: Provided always that prisoners whose sentences exceed thirty days' imprisonment shall not be detained therein except for such period as elapses before they can be conveyed to a gaol.

The Governor in Council shall have power from time to time to vary or revoke any such proclamation by notice in the *Government Gazette*, whereupon such proclamation as varied or such revocation shall take effect accordingly.

Gaols to be also  
houses of  
correction unless  
otherwise  
proclaimed.  
*Ib.* s. 8.

8. Except where it is otherwise proclaimed by the Governor in Council, every gaol shall be and be taken for all purposes as being equally a house of correction and a prison for debtors; and also every house of correction shall be taken to be a prison.

9. The Governor in Council may proclaim any hulk or floating prison (hereinafter called "hulk") to be used as a public prison for the reception and safe keeping of all prisoners convicted and sentenced for any offences by any court of Victoria; and may define by proclamation the limits and boundaries around such hulk within which no person shall come and the place of embarking and landing prisoners to and from such hulk, and such proclamations from time to time may vary alter new assign and revoke.

*Gaols Act 1915 s. 9.*  
Governor in Council may proclaim hulk as a public prison.

10. The Governor in Council may from time to time subject to the provisions of the *Public Service Act 1928* appoint a superintendent overseer and other officers and persons in and for every such hulk. And every such superintendent and overseer shall have and exercise on the said hulk such and the like powers and authorities as are by law incidental to the office of a gaoler in any gaol on land. And every prisoner confined in such hulk as aforesaid shall so far as they are applicable be subject to the like rules regulations and discipline as prisoners confined in any gaol on land are subject or liable to.

Appointment of officers for hulks.  
*ib. s. 10.*

11. It shall be lawful for the Governor in Council from time to time subject to the provisions of the *Public Service Act 1928* to appoint an officer to be called "The Inspector-General of Penal Establishments" and such officer to suspend or dismiss, and the person now holding office under that title shall be deemed to have been appointed under this section.

Inspector-General of Penal Establishments.  
*ib. s. 11.*

12. The inspector-general shall subject to the provisions hereinafter contained and to the control of the Governor in Council have the care charge and direction of all gaols being gaols within the meaning of this Act and all hulks.

Inspector-General to have control of gaols and hulks.  
*ib. s. 12.*

13. Nothing herein contained shall deprive or relieve the sheriff of any right power duty or liability vested in or imposed upon him by or under any Statute Act or common law in respect of any person committed to or confined in any gaol, not being a prisoner under sentence for some indictable offence or adjudication of imprisonment for some offence punishable on summary conviction.

Sheriff to retain rights and duties in all cases where same attach.  
*ib. s. 13.*  
28 & 29 Vict. c. 128 s. 58.

14. From time to time the Governor in Council may make and amend alter or revoke regulations for enabling the sheriff to exercise such powers and fulfil such duties as consistently with this Act and the control hereby given to the inspector-general he lawfully may or ought to exercise and fulfil within or with respect to any gaol or the confinement therein or release therefrom of prisoners.

Regulations for defining relative positions of sheriff and inspector-general.  
*ib. s. 14.*

15. The Governor in Council may in case of the absence on leave illness or temporary incapacity of any inspector-general for the time being appoint some fit and proper person to act in his stead, and may when it seems expedient appoint a deputy or assistant inspector-general, and every such person when so appointed shall have and exercise all the powers and duties of the inspector-general.

Governor in Council may appoint acting and deputy inspector-general of penal establishments.  
*ib. s. 15.*

*Gaols Act 1915*  
s. 16.  
Prisoners under  
sentence to be  
in custody of  
inspector-  
general.

**16.** Every person who since the first day of December One thousand eight hundred and seventy-one has been or who is in custody under any sentence of imprisonment either with or without hard labour shall be deemed to have been and to be in the legal custody of the inspector-general during the time of such sentence remaining in force.

Power to appoint  
deputy  
governors.  
*Ib.* s. 17.

**17.** The Governor in Council may subject to the provisions of the *Public Service Act 1928* from time to time appoint a deputy governor gaoler keeper or officer in charge of each gaol; and every such deputy shall during the absence illness suspension or other incapacity from whatsoever cause arising of the governor gaoler keeper or officer in charge of the gaol to which he has been appointed as such deputy have all the powers and perform all the duties appertaining to the office of governor gaoler keeper or officer in charge of such gaol.

The Governor in  
Council may  
appoint any  
number of  
visiting justices.  
*Ib.* s. 18.

**18.** (1) The Governor in Council may from time to time appoint and remove any number of fit and proper persons being justices to be visiting justices of any gaol or hulk, and every such visiting justice shall, unless prevented by illness or other sufficient cause, visit such gaol or hulk in such rotation and at such times being not oftener than once in every week, and make such reports as from time to time are required by order of the Governor in Council, and every such visiting justice shall have and exercise all the powers and authority of a visiting justice appointed under this Act.

Visiting justices  
not to be  
appointed for  
or to have  
jurisdiction in  
certain  
reformatory  
prisons.

*Indeterminate  
Sentences Act*  
1915 s. 12.

(2) Notwithstanding anything in the *Crimes Act 1928* or this Act—

(a) No person shall be appointed a visiting justice of any reformatory prison for the detention of persons not declared to be habitual criminals; and

(b) No visiting justice shall have or exercise any power or authority under the *Crimes Act 1928* or this Act with respect to any person detained in any such reformatory prison.

Power of judges  
and justices not  
affected.

*Gaols Act 1915*  
s. 19.

**19.** Nothing herein contained shall be taken to abridge or affect the power of any judge of the Supreme Court or of any justice having jurisdiction in any part of Victoria to visit and examine any such gaol or hulk at any time when he thinks fit.

#### PART II.—TREATMENT OF PRISONERS.

Sentences to date  
from first day of  
sittings &c.  
*Ib.* s. 20.

**20.** (1) Subject to the provisions of this and the next succeeding section all sentences of imprisonment or of imprisonment with hard labour on any offenders at any sitting of the Supreme Court or any court of general sessions shall date from the first day of holding such sitting, and all other sentences of imprisonment from the date of signing any warrant of commitment under which any offender is detained in custody unless such offender was at large at the date of the signing of such warrant, in which case the sentence shall date from the time of the arrest.<sup>(a)</sup>

(a) Where a prisoner has been released on bail pending an appeal to general sessions and subsequently pending the hearing of a special case to determine a point of law raised on the appeal, the term of his imprisonment was held

under this sub-section to date from the time of his arrest on a warrant taken out after a final decision had been given upholding the conviction.—*Ryan v. Milligan*, 2 A.L.R., 208.

(2) Whenever at any time any offender sentenced to any term of imprisonment either with or without hard labour or any other punishment by any court judge or justice or other person having jurisdiction to award the same is allowed to be or go at large either on bail or otherwise pending any appeal or the consideration of any question of law reserved or any case stated under the provisions of any law in force in Victoria, the period intervening between the day on which such offender was so allowed to go or be at large and the day when he renders himself or is taken into custody to undergo such sentence by reason of his having abandoned or failed to prosecute or proceed with such appeal question of law reserved or case stated or of the same being dismissed or decided adversely to such offender shall not count in calculating the term to be served by him under such sentence and the execution of the sentence shall during the said period be suspended.

*Gaols Act 1915.*  
Sentences of imprisonment suspended during appeal to be served after determination of appeal if unstained.

(3) Notwithstanding anything in this Act or any rule of law or practice to the contrary every such sentence shall be calculated exclusive of the time during which the execution of the same was suspended by reason of such appeal question of law reserved or case stated.

*Calculation of sentence.*

(4) If such offender is imprisoned under process in respect of an offence or offences other than the offence to which the appeal question of law reserved or case stated relates at the time when the same is finally determined such sentence shall (unless otherwise directed by the court judge or justice awarding such sentence or the court or judge determining any appeal or question of law reserved or case stated) take effect at the expiration of any sentence or sentences he may then be undergoing.<sup>(a)</sup>

Suspended sentence to be cumulative on any sentence being served.

(5) If any person lawfully imprisoned under any sentence escapes from any gaol or from the custody of any member of the police force gaoler officer or person in whose custody he is the period intervening between the day on which such person so escapes and the day when he surrenders himself or is apprehended shall not be reckoned as part of the term to be served by him under such sentence and the execution of such sentence shall during the said period be suspended.

*Suspension of sentence of escaped prisoner.*  
*Gaols Act 1915 s. 3.*

(6) Notwithstanding anything in any Act or any rule of law or practice to the contrary every such sentence shall be calculated exclusive of the time during which the execution of the same is so suspended.

*Calculation of sentence.*

(7) If such person is imprisoned during the said period under process in respect of an offence or offences other than that for which he received the sentence aforesaid the uncompleted portion of such sentence shall take effect at the expiration of any sentence or sentences he is then undergoing under such process.

Suspended sentence to be cumulative on any sentence being served.

(8) If the period during which any offender's sentence is so suspended either under sub-section (2) or sub-section (5) includes any time when such offender has been directed to be whipped or kept in solitary confinement then such whipping or solitary confinement shall not lapse, but the Governor in Council shall determine the time when such whipping shall be inflicted or such offender be kept in solitary confinement.<sup>(b)</sup>

(a) See also section 605 of the *Crimes Act 1928*. (b) See also section 598 (2) of the *Crimes Act 1928*.

*Gaols Act 1916*  
s. 21.  
Sentences of  
imprisonment to  
be cumulative  
unless otherwise  
directed.

**21.** Every sentence of imprisonment with or without hard labour or any other punishment imposed on any offender by any court judge or justice whatsoever shall notwithstanding anything to the contrary in any Act unless otherwise directed by such court judge or justice at the time of pronouncing the sentence be cumulative upon any uncompleted sentence or sentences of punishment previously imposed upon such offender by any court judge or justice.<sup>(a)</sup>

Discharge of  
certain  
prisoners.  
*Ib. s. 22.*

**22.** The Governor in Council may order the discharge from prison of any person who is imprisoned in default of finding sureties to keep the peace or to be of good behaviour, and of any person who is imprisoned for non-payment of any sum of money imposed as a penalty or forfeiture under any law now or hereafter to be in force the payment whereof or of any part whereof is remitted by the Governor in Council under any law now or hereafter to be in force.

Governor may  
direct removal  
of prisoners.  
*Ib. s. 23.*

**23.** The Governor may by warrant under his hand from time to time when and as he deems necessary direct the removal from any gaol or police gaol of any prisoner confined therein to any other gaol or police gaol in Victoria. Upon every such removal every such offender shall subject to the provisions of section seven as to police gaols be subject to be kept at such gaol or police gaol for the residue of his sentence or until removed by legal authority.<sup>(b)</sup>

Power to remove  
prisoners under  
sentence.  
*Ib. s. 24.*  
*Gaols Act 1916*  
s. 2.

**24.** (1) The inspector-general may by warrant under his hand cause the removal of any prisoner from any one gaol or police gaol to any other gaol or police gaol in Victoria: Provided he reports such removal within seven days to the Chief Secretary with the reasons for such removal for the approval of the Governor.<sup>(c)</sup> Upon every such removal every such prisoner shall subject to the provisions of section seven as to police gaols be subject to be kept at such gaol or police gaol for the residue of his sentence or until removed by legal authority.

Removal in case  
of sickness &c.

(2) The inspector-general may order the removal of any prisoner from any gaol to any hospital or institution for the purpose of his receiving medical or surgical treatment or to any place for the purpose of his visiting any person believed to be dying and such prisoner while in such hospital institution or place and in going thereto and returning therefrom shall be deemed to be in legal custody and such hospital institution or place shall be deemed to be a gaol. Such prisoner when the inspector-general directs shall at any time after he is so removed be taken in custody to the gaol whence he was removed or such other gaol as the inspector-general directs.

Prisoners may  
be set to work.  
*Gaols Act 1916*  
s. 25.

**25.** The inspector-general may order all such persons as are sentenced to imprisonment without being sentenced to hard labour (except such prisoners as maintain themselves) to be set to some work or labour which is not severe.

Maintenance of  
certain  
prisoners.  
*Ib. s. 26.*

**26.** No person so sentenced who has the means of maintaining himself shall have any claim to be supplied at the public expense.

(a) Compare *Crimes Act 1928*, section 512, and see *Justices Act, 1928*, section 120.

(b) This section repeals the *Habeas Corpus Act (31 Car. 2 c. 2)* so far as it is repugnant to its provisions.—*Reg. v. McCarthy*, 4 A.J.R., 155

(c) Proof of the Governor's approval is sufficient evidence of lawful holding, and such approval being proved it will be presumed that the return was properly made.—*R. v. O'Connor*, 23 A.L.T., 232; 8 A.L.R., 102.

**27.** In all cases in which any person is under sentence of imprisonment or detention on public works for any misdemeanour or on summary conviction it shall be lawful for any gaoler or other officer or person having the custody or charge of such offender to do for the safe keeping and preventing the escape of such offender all such acts as it would be lawful for such gaoler officer or person to do for the like purpose if such offender were then under sentence of imprisonment or detention for felony. The provisions of this section shall apply to all persons under sentence of punishment under sections forty-one and forty-three of this Act.

*Gaols Act 1915 s. 27.*  
Prevention of escape of person under sentence for misdemeanour.

**28.** The inspector-general shall have power to order the release from custody of any prisoner at any time within the seven days next immediately before the date at which such prisoner would have been entitled to be released under the regulations applicable to the detention of such prisoner.

*Inspector-general may discharge prisoner at any time within seven days next before the termination of prisoner's sentence.*

**29.** When a prisoner is detained in any gaol or lock-up under or awaiting sentence or awaiting trial or on remand or for any other lawful cause and such prisoner is charged with an offence he may upon an order which may be in the form or to the effect in the Second Schedule hereto made by a judge of the court or by a chairman of general sessions or by the justices or one of the justices before whom such charge may be tried or heard be brought up to answer such charge without a writ of *habeas corpus*; and every prisoner brought up under any such order shall be deemed to be in the legal custody of the member of the police force gaoler or other officer having the temporary custody of such prisoner and acting under such order, and he shall in due course return the prisoner into the custody from which the prisoner has been so brought.

*Prisoner may be brought before court on fresh charge without writ of habeas.*  
*Second Schedule.*

**30.** Any prisoner against whom sentence of death is recorded may be subjected to hard labour pending the determination of the Executive as to the disposition of the prisoner or the commutation of the sentence; and in the event of the sentence being commuted the term of imprisonment if a certain term is fixed shall date from the first day of the sittings of the court at which such prisoner has been convicted.

*Where sentence of death "recorded" prisoner may be kept to hard labour pending consideration by Executive.*  
*Section 30.*

**31.** The inspector-general shall have power to make inquiry and to take evidence on oath or otherwise as to the conduct of any governor of a gaol or any other gaol official, and as to the treatment and conduct of the prisoners, and as to any alleged abuse within the gaol prison hulk or penal establishment or in connexion therewith.

*Inspector general empowered to make inquiries and to take evidence on oath.*  
*Section 31.*

**32.** The inspector-general may cause any male person undergoing imprisonment for any felony or misdemeanour by the sentence of any court of competent jurisdiction whether sentenced to imprisonment with hard labour or to imprisonment only to be during the whole or any period of his sentence employed at such work or labour and in such place as the inspector-general directs, but such work or labour in the case of prisoners sentenced to imprisonment only shall not be severe: Provided that any court of competent jurisdiction in passing sentence upon any prisoner may exempt such prisoner from the operation of this section.

*Inspector-general may order labour not severe at such place as he may think fit to be performed by prisoners for felonies or misdemeanours although not sentenced to hard labour.*  
*Section 32.*

## PART III.—EMPLOYMENT OF PRISONERS.

*Gaols Act 1918*  
s. 2.  
Persons  
imprisoned &c.  
to be required  
to work.  
Comp. (N.S.W.)  
1918 No. 9 s. 2.

33. The Inspector-General, in addition to any powers conferred upon him by this Act, may, subject to rules and regulations under this Act, cause any male prisoner who, whether before or after the commencement of this Act, has been—

- (a) sentenced to imprisonment whether with or (unless such prisoner maintains himself) without hard labour ; or
- (b) imprisoned in default of compliance with any order made under the provisions of Part I. or Part II. of the *Maintenance Act 1928* or of Division seven of Part I. of the *Children's Welfare Act 1928* or of any corresponding previous enactments ; or
- (c) committed to prison under the provisions of the *Imprisonment of Fraudulent Debtors Act 1928* or any corresponding previous enactment,

to work at some trade or vocation or be employed in some labour in a gaol or in a place of detention hereinafter provided for :

Provided that any court of competent jurisdiction in passing sentence upon any person or committing any person to prison or in making any such order against any person may exempt him from the operation of this section.

Products of  
work.  
Ib. s. 3.  
Deduction of  
cost of  
maintenance.

34. (1) The products of the work of any such prisoner shall be sold or otherwise disposed of.

(2) An amount sufficient to cover the cost of the maintenance of such prisoner during his detention in custody shall be deducted from—

- (a) the net proceeds arising from the sale or disposal of the products of his work ; or
- (b) the wages earned by him according to the scale prescribed by the said rules and regulations for the class of labour in which he is employed ; or
- (c) from both such net proceeds and such wages.

Disposal of  
remainder.

(3) The manner of dealing with the remainder of such net proceeds or wages shall be as prescribed by the said rules and regulations ; and such amounts thereof as are so prescribed shall be applied in such manner as the inspector-general in his discretion directs—

- (a) towards the maintenance of the wife and family (if any) of such prisoner or of any person dependent upon him ; or
- (b) in or towards satisfaction of any order of maintenance or for confinement expenses under Part I. or Part II. of the *Maintenance Act 1928* or any corresponding previous enactment or of any order as to the payment of maintenance under Division seven of Part I. of the *Children's Welfare Act 1928* or any corresponding previous enactment (as the case may be) against such prisoner so far as the same is unsatisfied.

Places of  
detention.  
Ib. s. 4.

35. (1) The Governor in Council by notice published in the *Government Gazette* may—

- (a) appoint places to be places of detention under this Part ;  
and
- (b) alter or revoke any such appointment.

(2) Every place of detention so appointed shall be deemed to be a gaol within the meaning of this Act and every such place and the prisoners to whom this Part applies detained therein shall be subject to the provisions of this Part and of any regulations hereunder, and also to the provisions of the other Parts of this Act and the rules and regulations thereunder and of any other Act rules and regulations relating to gaols and to prisoners therein; and, without affecting the generality of this enactment, the provisions of sections twenty-seven thirty-two forty and forty-four of this Act shall, with such alterations modifications and substitutions as are necessary, apply also to prisoners to whom this Part applies.

*Gaols Act 1918.*  
Application of  
Act.

**36.** (1) Wherever it is necessary for the purposes of this Part the inspector-general may by warrant under his hand cause—

Warrant for  
removal &c.  
and custody  
of prisoners  
to whom this  
Part applies.  
*ib. s. 5.*

- (a) the removal of any prisoner to whom this Part applies—
  - (i.) from any gaol to any other gaol or to any place of detention under this Part;
  - (ii.) from any such place of detention to any other such place or to any gaol; and
- (b) the return of such prisoner to the gaol from which he was originally removed.

(2) The inspector-general shall report every such removal within seven days to the Chief Secretary with the reasons for such removal for the approval of the Governor.

(3) Upon every such removal every such prisoner shall be subject to be kept at the gaol or place of detention aforesaid (as the case may be) for the residue of his sentence or of the period of his detention in custody or until removed by legal authority.

- (4) Every prisoner to whom this Part applies—
  - (a) while being removed from or to any gaol or place of detention under this Part; and
  - (b) while returning to the gaol from which he was originally removed,

shall be deemed to be in the legal custody of any member of the police force gaoler or officer having the custody of such prisoner and acting under the warrant, who shall in due course deliver or return such prisoner into the custody of the gaoler of the gaol or officer in charge of the place of detention (as the case may be) in accordance with the terms of the warrant.

**PART IV.—OFFENCES.**

**37.** The governor of the gaol may hear and determine all charges against any prisoner for any such minor breach of the rules and regulations as by the rules and regulations made by the Governor in Council under this Act are directed to be submitted to the decision of the governor of the gaol, and may punish such prisoner by solitary confinement for a term of not more than two days or by close confinement in a cell on half rations for a term of not more than four days, such punishment to be concurrent with any sentence the prisoner may be then undergoing, or by stopping any gratuity which would otherwise be accruing to such prisoner for any period not exceeding one month, or by postponing the discharge of such prisoner under the regulations for any period not exceeding seven days: Provided always that a record of all

Governor of gaol  
may hear and  
determine minor  
charges to be  
enumerated in  
rules and  
regulations.  
*Gaols Act 1915*  
*s. 33.*

*Gaols Act 1916.* such punishments shall be kept and forwarded every month to the inspector-general; and no prisoner shall be punishable upon a second charge for the same offence before the visiting justice under section forty-three of this Act.

*Offenders attempting to escape guilty of a felony.*  
*Ib. s. 34.*

**38.** Every male person lawfully imprisoned for any crime misdemeanour or offence by the sentence of any court of competent jurisdiction, or employed at labour as a criminal on the roads or other public works of Victoria, who escapes or attempts to escape from any gaol or hulk or from the custody of any member of the police force gaoler or other officer in whose custody he may be, shall be guilty of felony; and being lawfully convicted thereof shall be liable to imprisonment with or without hard labour and with or without irons for a term of not more than five years.

*Punishment of persons aiding in escape.*  
*Ib. s. 35.*

**39.** Every person who conveys or causes to be conveyed or who delivers or causes to be delivered to any person for the purpose of being conveyed into any gaol or on board of any hulk in which any prisoner is confined, or who secretes or leaves upon or about any road public work gaol hulk or other place where any such prisoners are usually employed or confined for the purpose of being found or received by any such prisoner, any article of disguise instrument arms weapon or any poisonous or deleterious drug or any other article or thing likely to be used for the purposes of escape, shall be deemed and taken to have delivered the same to aid and assist the escape of a prisoner from such gaol hulk or other place even though no escape has been attempted.

Every such person and every person who in any other manner aids abets or assists or attempts to aid abet or assist any prisoner to escape from any such gaol hulk or other place may be apprehended by any member of the police force or other person without warrant and be by him detained and kept in safe custody until such offender can be brought before a court of petty sessions which may hear and determine the alleged offence.

Such offender shall upon conviction thereof or of any of such offences be liable to a penalty of not less than Fifty nor more than One hundred pounds, and in default of payment or in the discretion of the justices without any default to imprisonment with or without hard labour for a term of not more than two years.

*Harboring prisoners illegally at large.*  
*Ib. s. 36.*

**40.** Every person who harbors in or about his house lands or otherwise or in any manner employs any person under sentence of imprisonment and illegally at large shall be liable to a penalty of not less than One pound nor more than Fifty pounds: Provided that if it is proved to the satisfaction of the court that the person complained against used due and proper diligence in ascertaining whether the person so illegally at large was free or not and that such first-mentioned person had reasonable ground for believing that the person so illegally at large was free, it shall not be imperative on such court to impose any penalty.

*Punishment of certain offences.*  
*Ib. s. 37.*

**41.** Any two justices one of whom shall be a visiting justice may whether sitting in or out of sessions inquire in a summary way into any charge of absconding insubordination assault upon or attempt to do any bodily injury to any officer or prisoner or any riot or tumult in such gaol or hulk or at such roads or other public works or any wilful

and malicious destruction or injury of or attempt at the wilful and malicious destruction or injury of any such gaol or hulk or any furniture thereof or of any public works or of any implements used thereon brought against any prisoner. And such justices may in their discretion sentence such prisoner upon conviction to be kept to hard labour with or without irons for a term of not more than two years, or in their discretion to be kept in solitary confinement for any portion of such term not more than three months in periods none of which shall exceed one month and which shall be at intervals of at least one month; and may direct that during such confinement such prisoner shall be deprived of any particular portion of the ordinary diet of the prisoners in the same place of punishment or confinement.

42. No police magistrate whether a visiting magistrate or visiting justice or not shall alone have or exercise the power conferred by the last preceding section.

*Gaols Act 1915.*  
Police  
magistrate not  
to act alone.  
*Ib. s. 38.*

43. Any visiting justice may inquire in a summary way into any charge of attempting to abscond idleness insolence refusal to work disobedience of orders use of indecent abusive or improper language or breach or infringement of any rule or regulation duly made or any other misconduct brought against any prisoner. And such visiting justice may in his discretion sentence such prisoner upon conviction to be kept at hard labour with or without irons for a term of not more than six months for the first offence and of not more than eighteen months for a second or subsequent offence; or to be kept in solitary confinement either continuously or at such intervals as he thinks fit for a period of not more than twenty-one days for the first offence and of not more than thirty days for a second or subsequent offence; and may direct that during such confinement such prisoner shall be deprived of any particular portion of the ordinary diet of the prisoners in the same place of punishment or confinement.

Punishment of  
lesser offences.  
*Ib. s. 39.*

44. If any person under any sentence of imprisonment with hard labour in order to evade labour wilfully disables himself or designedly prevents or protracts the cure of any disease or complaint which he has contracted, every such offender being convicted of such offence before any visiting justice shall be liable to serve for such further time as such person has been so disabled or delayed from labour as aforesaid. And in every such case a certificate under the hand of the surgeon who has the care of and is attending upon such person that he had so wilfully disabled himself or had designedly prevented or protracted the cure of any such disease or complaint as aforesaid shall be deemed sufficient proof of such offence.

Prisoners  
wilfully  
disabling  
themselves.  
*Ib. s. 40.*

45. (a) Every person who contrary to the provisions of any Act or regulation relating to gaols holds or attempts to hold any communication with any prisoner; and  
(b) Every person who delivers or in any manner whatsoever endeavours or attempts to deliver or causes to be delivered to any prisoner or introduces or attempts or endeavours to introduce or causes to be introduced into any gaol or hulk any money letter tobacco article of clothing or any

Penalty for  
holding  
communication  
with or supply-  
ing prisoners  
with forbidden  
articles.  
*Ib. s. 41.*

*Gaols Act 1915.*

other article or thing whatsoever not allowed by the rules and regulations made under the authority of this Act; and

- (c) Every person who lurks or loiters about any road or other public works or any gaol hulk or other place in which prisoners may be confined or employed for any of the purposes aforesaid; and
- (d) Every person who delivers or causes to be delivered to any other person any such money letter tobacco article of clothing article or thing for the purpose of being conveyed or introduced as aforesaid, or who secretes or leaves upon or about any place where any prisoner is usually employed any such money letter tobacco article of clothing article or thing for the purpose of being found or received by any prisoner; and
- (e) Every person who in any other manner conveys or causes to be conveyed to any prisoner any such money letter tobacco article of clothing article or thing

may be apprehended by any member of the police force warden or other officer or by any person in whose custody any such prisoner then is without warrant and may by such member warden officer or other person be detained and kept in safe custody until he can be brought before a court of petty sessions which may hear and determine such offence; and every such offender shall be liable to imprisonment with or without hard labour for a term of not more than two years.

Unlawful purposes to be presumed in certain cases.  
*Ib. s. 42.*

46. If any person loiters about any road or other public works or any gaol hulk or other place in which prisoners may be confined or employed and refuses or neglects to depart therefrom upon being duly warned so to do by any member of the police force warden officer or authorized person, or if any person (not being a prisoner or a gaoler warden or other officer or person duly authorized) is found within the boundaries of any gaol, such person shall be deemed to be lurking or loitering about such road or other public works or such gaol hulk or other place for the purposes aforesaid, and the onus of proof that such person was there for some other purpose shall rest upon such person.

No person to approach hulls.  
*Ib. s. 43.*

47. Every person who approaches any hulk in which any prisoner is confined, or who comes within the limit or boundary marked out by any buoys surrounding any such hulk in any ship boat or other craft unless driven within the same by stress of weather, or who lands or attempts to land upon or embarks or attempts to embark from any point of land bay inlet cove or other place which has been proclaimed as the place of embarking or landing prisoners to or from any such hulk or which is enclosed or marked off in any other manner for any of such purposes or for the confinement or employment of any such prisoner, may be apprehended by any member of the police force or by any other person whomsoever without warrant; and be by him detained and kept in safe custody until he can be brought before a court of petty sessions. And any ship boat or other craft which any such person may be in or may have landed from or embarked in or attempted to land from or embark in may be seized and detained by any such member or person.

And every such offender shall be liable to a penalty of not less than Five nor more than Thirty pounds; and in default of payment or in the discretion of such justices without default to imprisonment with or without hard labour for a term of not more than six months; and upon conviction any ship boat or other craft which is so seized as aforesaid shall be forfeited to His Majesty.

48. Every sentence of punishment by visiting justices shall unless otherwise directed by the justice at the time of pronouncing the sentence be cumulative upon the substantive sentence or sentences under which the prisoner is detained, but shall be concurrent with or cumulative upon any previous uncompleted sentence of punishment by visiting justices under any Act relating to gaols as shall in each case be determined by the justice imposing a second or subsequent sentence at the time of imposing such sentence.

Visiting Justices sentences to be cumulative upon court sentences but may be made concurrent or cumulative upon prison sentences. *Ib. s. 44.*

49. (1) Any sentence of punishment by visiting justices upon any prisoner shall, whether concurrent with or cumulative upon the substantive sentence of such prisoner or any uncompleted sentence of punishment by visiting justices previously imposed upon him take effect immediately unless the justices imposing the same order that it shall take effect upon the completion of such substantive sentence or of any such uncompleted sentence of punishment previously imposed or at some other time before the final discharge of such prisoner.

Sentence of visiting justices to take effect immediately unless otherwise ordered. *Ib. s. 45.*

(2) If any sentence of punishment by visiting justices is cumulative upon any previous uncompleted sentence and such first-mentioned sentence takes effect before the completion of any previous uncompleted sentence it shall have the effect of suspending any and every previous sentence uncompleted at the time it takes effect; and any and every such suspended sentence shall at the expiration of such suspending sentence of punishment become again in force so that the period of such suspending sentence shall not be computed as a portion of the time served under the suspended sentence.

If sentence cumulative taking effect before completion of previous sentences such previous sentences suspended. *Ib. s. 46.*

50. The last preceding section shall be deemed to have taken effect as from the date of the passing of *The Gaols Act 1887*; and in the said section the expression "sentence of punishment by visiting justices" shall include a sentence imposed for misconduct during the time he is detained in custody upon any prisoner by a visiting justice alone or by a visiting justice and another justice under the provisions of any law relating to gaols.

Effect of preceding section. *Ib. s. 47.*

51. (1) Where a person detained in a reformatory prison for habitual criminals is sentenced by a visiting justice to a term of imprisonment in a gaol such person on the expiry of such term of imprisonment—

Habitual criminal sent to gaol by visiting justice to be returned to reformatory prison on expiry of sentence. *Indeterminate Sentences Act 1915 s. 13.*

(a) shall be removed to a reformatory prison for habitual criminals; and

(b) shall continue to be detained in a reformatory prison for habitual criminals during the Governor's pleasure under his original sentence.

(2) The visiting justice may issue any warrant necessary for the purposes of this section.

*Gaols Act 1915*  
s. 48.  
Form of  
conviction.  
Third Schedule.

52. No conviction on any charge under sections forty-one and forty-three of this Act need be drawn up in any formal manner, but a book to be called the "Conviction Book" according with and in the form or to the effect set out in the Third Schedule hereto shall be kept in every gaol; and the visiting justice or justices shall cause to be entered in such book the particulars of each charge and of the adjudication thereon, and the visiting justice or justices then adjudicating shall sign his or their name or names opposite to such entry, and such entry so signed by him or them shall be deemed if the prisoner is convicted of such charge to be a conviction to all intents and purposes whatsoever.

Conviction book  
or certified copy  
of entry to be  
conclusive  
evidence of such  
conviction.  
*Ib.* s. 49.

53. Such book having an entry so signed of any conviction or a document purporting to be a copy of any particular entry so signed of any conviction therein purporting to be certified under the hand of the officer of the gaol having the custody of such book to be a true copy of such entry in such book shall be respectively good and sufficient evidence of such conviction and be received as such in any court or before any person having by law or by consent of parties authority to hear receive and examine evidence.

Imprisonment  
not to form part  
of original  
sentence.  
*Ib.* s. 50.

54. The term of any imprisonment hard labour or solitary confinement under any of the provisions of this Act shall not be deemed or taken as a portion of the term of imprisonment or hard labour to which such prisoner has been previously sentenced.

#### PART V.—SUPPLEMENTAL.

Regulations.  
*Ib.* s. 51.  
*Gaols Act 1915*  
ss. 6, 7.  
*Crimes Act 1915*  
s. 560.

55. The Governor in Council may from time to time make vary alter or revoke rules and regulations for or with respect to—

- (a) the management and good government of gaols prisons hulks and penal establishments;
- (b) the safe custody hours of labour and mode of employment of prisoners and for the different classification of prisoners of each sex in such gaols prisons hulks and penal establishments and for the individual separation of all or any of the prisoners confined therein;
- (c) the mitigation or remission conditional or otherwise of any sentence of imprisonment or of imprisonment or detention with hard labour for any indictable offence or offence punishable on summary conviction as an incentive to or reward either for good conduct or for special industry in the performance of any work or labour allotted to an offender whilst he is imprisoned or detained under such sentence and may mitigate or remit the term of punishment accordingly;<sup>(a)</sup>
- (d) the trades vocations or classes of work at which prisoners are pursuant to Part III. of this Act to be employed;
- (e) the mode of sale and disposal of the products of the work of such prisoners;
- (f) the disposal of the proceeds of such sale;

(a) See *Crimes Act 1915*, section 560.

- (g) scales of wages for the several classes of labour in which prisoners may pursuant to Part III. of this Act be employed, and the disposal of such wages ;
- (h) all matters necessary or expedient for the good order discipline safe custody and health of prisoners to whom Part III. of this Act applies ; and
- (i) all matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of Part III. of this Act ;

and otherwise for the management and good government of prisoners. And all rules and regulations by the Governor in Council heretofore made or purporting to have been made under or by virtue of any Act hereby repealed or any corresponding previous enactment and which have not been revoked by any subsequent rules and regulations made by the Governor in Council are hereby declared to have been and shall be deemed to have been valid and effectual from the time of the making of the same ; and such rules and regulations are and shall continue to be in force and of valid effect until the same are repealed by an order of the Governor in Council made under this Act.

56. Any person arrested under any process of any court or for any offence may be taken to such gaol or lock-up as by reason of its nearness or accessibility to the place of arrest is in the opinion of the person making such arrest most convenient and may be there detained until discharged or otherwise dealt with in due course of law notwithstanding that such gaol or lock-up is not in the same bailiwick as that in which the cause of action accrued or the offence was committed.

Person arrested may be detained in most convenient gaol irrespective of bailiwick.  
Gaols Act 1915 s. 52.

57. Nothing contained in this Act shall affect the jurisdiction or responsibility of any sheriff in respect of any prisoner under sentence of death or his jurisdiction or control over the gaol where such prisoner is confined and the officers thereof so far as is necessary for the purpose of carrying into effect the sentence of death or for any purpose relating thereto.

Jurisdiction of sheriff in case of sentence of death preserved.  
Ib. s. 53.

58. All proceedings under this Act other than proceedings in respect of indictable offences shall be had and taken in a summary way ; and no such proceeding shall be removed by *certiorari* into the Supreme Court.

Summary proceedings. No *certiorari*.  
Ib. s. 54.

59. All fines and penalties under this Act shall be appropriated to the police superannuation fund.

Application of fines.  
Ib. s. 55.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Number of Act.	Title of Act.	Extent of Repeal.
2837 ... ..	<i>Crimes Act 1915</i> ... ..	Section 560.
2659 ... ..	<i>Gaols Act 1915</i> ... ..	The whole.
2758 ... ..	<i>Indeterminate Sentences Act 1915</i> ... ..	Sections 12 and 13.
2351 ... ..	<i>Gaols Act 1916</i> ... ..	The whole.
2980 ... ..	<i>Gaols Act 1918</i> ... ..	The whole.

