

HABITUAL CRIMINALS ACT.

Act No. 19, 1957.

An Act to make provision for and with respect to the pronouncement, detention and control of habitual criminals; to repeal the Habitual Criminals Act, 1905; to amend the Prisons Act, 1952, the Criminal Appeal Act of 1912 and certain other Acts; and for purposes connected therewith. [Assented to, 29th April, 1957.]

Elizabeth II,
No. 19, 1957.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Habitual Criminals Act, 1957".

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(2)

Short title
and
commence-
ment.

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(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Repeals
and
savings.

2. (1) The enactments mentioned in the Schedule to this Act are to the extent therein specified hereby repealed.

(2) (a) Nothing in this Act shall affect the validity of the declaration of any person as an habitual criminal under the provisions of the Habitual Criminals Act, 1905-1952.

(b) Any person who, immediately before the commencement of this Act, was an habitual criminal under the provisions of the Habitual Criminals Act, 1905-1952, shall be an habitual criminal under the provisions of this Act, and shall, unless immediately before such commencement, he was at large pursuant to a license granted to him under the provisions of section seven of the Habitual Criminals Act, 1905-1952, be detained in prison until he is released in accordance with the provisions of subsection one of section seven of this Act.

(c) Without prejudice to the generality of any of the provisions of the Interpretation Act of 1897, as amended by subsequent Acts, any proceedings under paragraph (1) or (2) of section eight of the Habitual Criminals Act, 1905-1952, which were pending immediately before the commencement of this Act may, notwithstanding the provisions of this Act, be continued and completed under that section after that commencement, and for the purposes of any such proceedings the said section eight shall be deemed to be amended by omitting the words "recommitted to the place of confinement, and he shall be so recommitted accordingly, and the judge, justice, or justices may grant any necessary warrant for his committal" and by inserting in lieu thereof the words "detained in prison until he is released in accordance with the provisions of subsection one of section seven of the Habitual Criminals Act, 1957, and the judge, justice or justices may grant any necessary warrant for his committal to prison accordingly".

(d)

(d) Any person detained in prison pursuant ^{No. 19, 1957.} to the provisions of paragraph (b) of this subsection, or pursuant to a direction of a judge, justice or justices given under the provisions of section eight of the Habitual Criminals Act, 1905-1952, as deemed to be amended by paragraph (c) of this subsection, in respect of proceedings referred to in the said paragraph (c) shall be deemed to be a convicted prisoner within the meaning of the Prisons Act, 1952, as amended by this Act.

(3) (a) All moneys which immediately before the commencement of this Act were standing to the credit of an habitual criminal in an account opened in his name at a Gaol pursuant to Regulation twenty-one of the Regulations made under the Habitual Criminals Act, 1905, as amended by subsequent Acts, and published in the Gazette number one hundred and thirty-five of the eleventh day of October, one thousand nine hundred and twenty-nine, shall continue to stand to the credit of such habitual criminal in such account until he is released in accordance with the provisions of subsection one of section seven of this Act, and shall upon his release be dealt with in the manner prescribed by paragraph (1) of Regulation 22A of those Regulations as if that paragraph were in force at the date of his being so released.

(b) All moneys paid, either before or after the commencement of this Act, to the Managing Secretary of the Prisoners' Aid Association pursuant to the said paragraph (1) and held by him for payment to an habitual criminal or held by such Association in trust for an habitual criminal shall continue to be so held and shall be dealt with as if the said Regulation 22A (paragraph (7) thereof excepted) were in force and applied to such moneys.

3. (1) In this Act, unless the context or subject ^{Interpreta-} matter otherwise indicates or requires,— _{tion.}

“Imprisonment” includes penal servitude, and
“imprison” and derivations thereof have
corresponding meanings.

“Indictment”

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“Indictment” includes any information presented or filed as provided by law for the prosecution of offences.

“Judge” means a Judge of the Supreme Court or Chairman of Quarter Sessions.

“Regulations” means regulations made under this Act.

(2) For the purposes of this Act, any person sentenced or otherwise dealt with under subparagraph (ii) of paragraph (d) of subsection one of section 51A of the Justices Act, 1902, as amended by subsequent Acts, shall be deemed to be a person convicted on indictment.

Judge may pronounce convicted person an habitual criminal.

4. (1) When any person of or above the age of twenty-five years is convicted on indictment and he has on at least two occasions previously served separate terms of imprisonment as a consequence of his convictions of indictable offences, not being indictable offences that were dealt with summarily without his consent, then if the judge before whom such person is so convicted is satisfied that it is expedient with a view to such person's reformation or the prevention of crime that such person should be detained in prison for a substantial time, the judge may, in addition to passing sentence upon such person for the offence of which he is so convicted, pronounce him to be an habitual criminal and shall thereupon pass a further sentence upon him in accordance with the provisions of section six of this Act.

(2) When any person of or above the age of twenty-five years is convicted summarily before a stipendiary magistrate of an indictable offence punishable summarily only with the consent of such person, and he has on at least two occasions previously served separate terms of imprisonment as a consequence of his convictions of indictable offences, not being indictable offences that were dealt with summarily without his consent, the stipendiary magistrate may, in addition to passing sentence upon him for the offence of which he is then convicted, direct that an application be made by the clerk of the peace to a judge to have such person pronounced to be an habitual criminal.

If

If the judge to whom such application is made is satisfied that it is expedient with a view to such person's reformation or the prevention of crime that such person should be detained in prison for a substantial time, the judge may pronounce him to be an habitual criminal and shall thereupon pass sentence upon him in accordance with the provisions of section six of this Act. No. 19, 1957.

(3) This section shall apply—

- (a) whether any such previous conviction or imprisonment took place within or without New South Wales and either before or after the commencement of this Act;
- (b) whether any such previous imprisonment was served as a consequence of a conviction for an indictable offence committed before or after any previous pronouncement as an habitual criminal, made under this Act, of the person to whom the conviction relates, or any previous declaration as an habitual criminal, made under the Habitual Criminals Act, 1905-1952, of such person.

(4) (a) Any term of imprisonment served by any person as a consequence of his conviction of an indictable offence which term was served cumulatively upon any other term of imprisonment served by such person as a consequence of his conviction of such an offence shall not, for the purposes of this section, be counted as a separate term of imprisonment previously served by such person as a consequence of his conviction of such an offence.

(b) Where any term of imprisonment served by any person as a consequence of his conviction of an indictable offence was served concurrently or partly concurrently with any other term of imprisonment served by such person as a consequence of his conviction of such an offence, such terms of imprisonment shall, for the purposes of this section, be counted as one separate term of imprisonment previously served by such person as a consequence of his conviction of such an offence.

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Proof of
previous
conviction
and im-
prisonment.

5. (1) For the purposes of this Act, a previous conviction against any person, whether such conviction took place within or without New South Wales, may be proved by producing a record or extract of such conviction, and by giving proof of the identity of such person with the person appearing in the record or extract of conviction to have been convicted.

A record or extract of a conviction shall consist of—

- (a) an extract from the indictment or the counts of the indictment on which the said person was convicted;
- (b) a statement of the verdict;
- (c) a statement of the sentence,

certified under the hand of the clerk of the court or other officer purporting to have the custody of the records of the court by which such conviction was made.

(2) For the purposes of this Act, previous imprisonment—

- (a) served within New South Wales by any person may be proved by—
 - (i) producing a certificate under the hand of the Comptroller-General of Prisons, or the Deputy Comptroller of Prisons, specifying the term of such imprisonment and the convictions in respect whereof such person was imprisoned; and
 - (ii) giving proof of the identity of such person with the person appearing in the certificate to have been imprisoned;
- (b) served without New South Wales by any person may be proved by—
 - (i) producing a certificate under the hand of the Comptroller-General of Prisons or other officer in charge of penal institutions in the state or country within which the imprisonment was served, specifying the term of such imprisonment

imprisonment and the convictions in respect whereof such person was imprisoned; and

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(ii) giving proof of the identity of such person with the person appearing in the certificate to have been imprisoned.

(3) The record, extract or certificate referred to in this section shall be admissible in evidence without proof of the signature or official character of the person appearing to have signed the same.

(4) The mode of proving a previous conviction or previous imprisonment authorised by this section shall be in addition to and not in exclusion of any other authorised mode of proving any such conviction or imprisonment.

6. (1) The judge who, pursuant to the provisions of section four of this Act, has pronounced a person to be an habitual criminal, shall pass a sentence of imprisonment upon such person for a term of not less than five years nor more than fourteen years.

Sentence to be imposed on persons pronounced to be habitual criminals.

(2) Any sentence of imprisonment being served by any such person at the time he is pronounced to be an habitual criminal shall be served concurrently with the sentence imposed pursuant to the provisions of subsection one of this section.

7. (1) If the Governor determines that an habitual criminal undergoing imprisonment or detention at the commencement of this Act, or detained in prison pursuant to a direction of a judge, justice or justices given under the provisions of section eight of the Habitual Criminals Act, 1905-1952, as deemed to be amended by paragraph (c) of subsection two of section two of this Act, in respect of proceedings referred to in the said paragraph (c), is sufficiently reformed, or for other good cause, he may grant to him a written license to be at large, for such period endorsed on the license and subject to such conditions so endorsed as the Governor shall prescribe:

Governor may direct habitual criminal's release.

Provided

No. 19, 1957.

Provided that where an habitual criminal is at such commencement serving a definite term of imprisonment, a written license to be at large shall not be granted to him under this subsection until that term has expired or been otherwise vacated.

(2) (a) The Governor may—

- (i) if he is satisfied that the conduct and attitude of an habitual criminal during the period of such habitual criminal's imprisonment pursuant to a sentence imposed under the provisions of section six or eight of this Act warrant such habitual criminal's release on license under the provisions of this subsection, grant to such habitual criminal, at any time after the expiration of two-thirds of such sentence, a written license to be at large;
- (ii) if for any other good cause he determines that an habitual criminal sentenced under the provisions of section six or eight of this Act should be released on license under the provisions of this subsection, grant to such habitual criminal a written license to be at large.

(b) Where in the exercise of the royal prerogative of mercy the Governor proposes to remit any sentence imposed on an habitual criminal under the provisions of section six or eight of this Act the Governor may in lieu of remitting such sentence grant to such habitual criminal a written license to be at large.

(c) Any written license granted under this subsection shall be for such period endorsed on the license and subject to such conditions so endorsed as the Governor may prescribe:

Provided that such period shall not extend beyond the time when the term of imprisonment imposed on such habitual criminal under the said section six or eight would, if he were not released on license under the provisions of paragraph (a) or (b) of this subsection, expire by effluxion of time.

(3) Nothing in this section shall limit or in any way affect the powers vested in the Governor in the exercise of the royal prerogative of mercy.

S. (1) A license, granted to an habitual criminal under the provisions of section seven of the Habitual Criminals Act, 1905-1952, and in force immediately before the commencement of this Act, and the conditions endorsed thereon shall, notwithstanding anything contained in this Act, continue to have full force and effect until the period specified in the license has expired and the license shall be deemed to have been granted and the conditions shall be deemed to have been endorsed on the license under the provisions of section seven of this Act.

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Conditions
under which
offender
may be
arrested.

(2) If an habitual criminal or a former habitual criminal—

- (a) is proved to a stipendiary magistrate or any two justices in petty sessions to have failed during the period endorsed on the license held by such habitual criminal or previously held by such former habitual criminal to comply with a condition of such license; or
- (b) is convicted before a stipendiary magistrate or any two justices in petty sessions of any offence punishable on summary conviction for which imprisonment for a period exceeding three months may be imposed, such offence having been committed during the period endorsed on the license held by such habitual criminal or previously held by such former habitual criminal; or
- (c) is convicted before a stipendiary magistrate or any two justices in petty sessions of an indictable offence punishable summarily, such offence having been committed during the period endorsed on the license held by such habitual criminal or previously held by such former habitual criminal,

then such stipendiary magistrate or justices shall, in addition to passing sentence upon such habitual criminal or former habitual criminal for any offence of which he is so convicted, by warrant commit such habitual criminal or former habitual criminal to appear at such sittings of the Supreme Court or at such Court of Quarter

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No. 19, 1957. Quarter Sessions as such stipendiary magistrate or justices may direct, and the provisions of the Justices Act, 1902, as amended by subsequent Acts, relating to warrants of commitment for trial, shall apply mutatis mutandis to any such warrant.

(3) If an habitual criminal or a former habitual criminal is convicted on indictment of an offence committed during the period endorsed on the license held by such habitual criminal or previously held by such former habitual criminal then the judge before whom such habitual criminal or former habitual criminal is so convicted may, in addition to passing sentence upon such habitual criminal or former habitual criminal for that offence, deal with such habitual criminal or former habitual criminal as hereinafter in this section provided.

(4) Where it appears to the clerk of the peace from information in his possession—

(a) that an habitual criminal or a former habitual criminal has been convicted—

(i) before a stipendiary magistrate or any two justices in petty sessions of an offence mentioned in paragraph (b) or (c) of subsection two of this section; or

(ii) on indictment,

and that the offence of which he was so convicted was committed during the period endorsed on the license held by such habitual criminal or previously held by such former habitual criminal; and

(b) that the stipendiary magistrate or justices or judge before whom such habitual criminal or former habitual criminal was so convicted was not aware that such offence was committed during such period,

the clerk of the peace may make application to a judge for an order that such habitual criminal or former habitual criminal, if he is in custody, be brought before that or some other judge, or for a warrant for the arrest
of

of such habitual criminal or former habitual criminal, if No. 19, 1957. he is at large, and the judge to whom the application is made may make such order or issue such warrant.

(5) (a) Any judge—

- (i) before whom an habitual criminal or a former habitual criminal appears pursuant to a warrant issued under subsection two of this section; or
- (ii) authorised by subsection three of this section to deal with an habitual criminal or a former habitual criminal; or
- (iii) before whom an habitual criminal or a former habitual criminal is brought pursuant to any order or warrant made or issued under subsection four of this section,

may sentence such habitual criminal or former habitual criminal to imprisonment for a term not exceeding fourteen years:

Provided that a former habitual criminal shall not be sentenced by a judge under the provisions of this paragraph unless the judge first pronounces such former habitual criminal to be an habitual criminal:

Provided further that where an habitual criminal or a former habitual criminal is brought before a judge pursuant to any order or warrant made or issued under subsection four of this section the judge shall not sentence such habitual criminal, or pronounce such former habitual criminal to be an habitual criminal and sentence him, under the provisions of this paragraph, unless the judge is satisfied as to the matters mentioned in paragraphs (a) and (b) of the said subsection four.

(b) Any sentence of imprisonment being served by any such habitual criminal or former habitual criminal at the time he is sentenced by a judge under the provisions of this subsection shall be served concurrently with the sentence imposed under those provisions.

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(6) Any member of the police force who reasonably suspects that an habitual criminal or a former habitual criminal has failed to comply with any one or more of the conditions endorsed on the license held by such habitual criminal or previously held by such former habitual criminal, may arrest such habitual criminal or former habitual criminal and bring him before a court of petty sessions to be dealt with in accordance with this section.

(7) In this section—

“habitual criminal” means an habitual criminal who is the holder of a license granted or deemed to have been granted to him under the provisions of section seven of this Act.

“former habitual criminal” means a person who has ceased to be an habitual criminal and who, while he was an habitual criminal was the holder of a license granted or deemed to have been granted to him under the provisions of section seven of this Act.

Judge to
consider
Report of
Adult
Probation
Service.

9. Before sentencing any person under the provisions of this Act, a judge shall consider any report in respect of such person that may be obtained by such judge from the Adult Probation Service.

When person
ceases to
be an
habitual
criminal.

10. (1) In the case of an habitual criminal to whom a license is granted under section seven of this Act, he shall if, during the period endorsed on such license—

- (a) a warrant committing him to appear at a sitting of the Supreme Court or at a Court of Quarter Sessions has not been issued under subsection two of section eight of this Act, and he has not been convicted on indictment; or
- (b) such a warrant has been so issued or he has been so convicted, but he has not been sentenced under the provisions of subsection five of the said section eight; or
- (c) he has been sentenced under the provisions of the said subsection five, but the term of imprisonment imposed under such sentence did not extend beyond such period,

cease upon the expiration of such period to be an habitual criminal. (2)

(2) In the case of any other habitual criminal, he shall cease to be an habitual criminal upon the expiration of his sentence as an habitual criminal. No. 19, 1957.

11. (1) The Prisons Act, 1952, is amended by omitting paragraph (e) of the definition of "convicted prisoner" in section four. Amendment of Act No. 9, 1952. Sec. 4. (Definitions.)

(2) The Prisons Act, 1952, as amended by this Act, may be cited as the Prisons Act, 1952-1957.

12. (1) The Criminal Appeal Act of 1912, as amended by subsequent Acts, is amended by omitting section 5E and by inserting in lieu thereof the following section:— Amendment of Act No. 16, 1912. Subst. sec. 5E.

5E. Any person who—

(a) is pronounced to be an habitual criminal under the provisions of the Habitual Criminals Act, 1957, and is sentenced under the provisions of that Act, may, by leave of the court, appeal against such pronouncement and sentence; or Appeal by any person pronounced an habitual criminal.

(b) is an habitual criminal and is sentenced under the provisions of subsection five of section eight of that Act, may, by leave of the court, appeal against such sentence,

and the provisions of this Act applicable to an appeal against a sentence passed on a conviction on indictment shall apply to such an appeal.

(2) Notwithstanding anything contained in subsection one of this section, section 5E of the Criminal Appeal Act of 1912, as amended by subsequent Acts other than this Act, shall continue in force as respects any declaration of a person as an habitual criminal made under the Habitual Criminals Act, 1905-1952, before the commencement of this Act.

SCHEDULE.

Medical Practitioners (Amendment) Act.

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SCHEDULE.

Sec. 2 (1).

No. of Act.	Name of Act.	Extent of Repeal
1905, No. 15 ...	Habitual Criminals Act, 1905	The whole.
1924, No. 10 ...	Crimes (Amendment) Act, 1924	Section thirty-one.
1937, No. 35 ...	Statute Law Revision Act, 1937.	So much of the Second Schedule as amended section twelve of Act No. 15, 1905.
1951, No. 31 ...	Crimes (Amendment) Act, 1951	Section nine.
1952, No. 9 ...	Prisons Act, 1952	Section fifty-one.
