

Bihar Borstal Act, 1961

11 of 1962

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PREAMBLE

An Act to make provision for the establishment and regulation of Borstal institutions in the State of Bihar and for the detention and training of adolescent offenders therein and matters connected there with.

Be it enacted by the Legislature of the State of Bihar in the Twelfth Year of the Republic of India as follows:-

1. Short title, extent and commencement :-

(1) This Act may be called the Bihar Borstal Act, 1961.

(2) It extends to the whole of the State of Bihar.

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

2. Definition :-

In this Act, unless there is anything repugnant in the subject or context,-

(a) "adolescent offender" means any person not less than fifteen and not more than twenty-one years of age who has been convicted of any offence punishable with imprisonment but not punishable with death or who having been ordered to give security under section 106 or section 118 of the Code of Criminal Procedure, 1898 (V of 1898), has failed to do so or who, when the bond has been cancelled under section 126A of that Code, has failed to give fresh security;

(b) "Borstal Institution" means a place in which adolescent offenders may be detained under this Act and given such industrial training and other instruction and subjected to such disciplinary

and moral influences as well conduce to their reformation;

(c) "detained" with its grammatical variations and cognate expressions means detained in a Borstal Institution;

(d) "Director" means a Director of Borstal Institutions appointed under subsection (1) of Section 4;

(e) "inmate" means any person ordered to be detained;

(f) "officer" means an officer of a Borstal Institution appointed in such manner as may be prescribed and includes the Superintendent and Director of Borstal Institutions appointed under section 4;

(g) "prescribed" means prescribed by rules made by the State Government under this Act;

(h) "superintendent" means superintendent of a Borstal Institution appointed under sub-section (2) of Section 4; and

(i) "visiting committee" means a visiting committee appointed under subsection (3) of Section 4.

3. Establishment of Borstal Institutions :-

For the purposes of this Act the State Government may establish one or more Borstal Institutions.

4. Appointment of Director of Borstal Institutions, officers, and visiting committee :-

(1) The State Government shall appoint a Director of Borstal Institutions who shall exercise subject to the directions issued by the State Government, general control and superintendence over all Borstal Institutions.

(2) For every Borstal Institution the State Government shall appoint a superintendent, and such other officers as it may consider necessary in such manner as may be prescribed.

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

5. Power of Court to make order for detention :-

(1) If it appears to the High Court, a Court of Session or any Magistrate of the first class that an adolescent offender convicted by such Court or Magistrate or failing to obey an order made by such Court or Magistrate to give security under section 106 or Section 118 or Section 126A of the Code of Criminal Procedure, 1898 (V of 1898), should be detained, the Court or the Magistrate may, in lieu of passing a sentence of imprisonment, make an order for the detention of the adolescent offender for a term which shall not be less than two years and more than five years when the order is made by the Court and shall not be less than two years and more than three years when the order is made by the Magistrate.

(2) When any Magistrate not empowered to make an order under sub-section (1) is of opinion that in respect of any adolescent offender convicted by him an order should be made under the said sub-section he shall, without passing any sentence, record such opinion and submit the records of the case and forward the adolescent offender to the Sessions Judge and thereupon the Sessions Judge may either pass an order under sub-section (1) or pass such other order or sentence as the Magistrate might himself have passed.

(3) Before making an order of detention under sub-section (1) or sub-section (2), the Court, the Sessions Judge or the Magistrate, as the case may be, shall after considering any report submitted by the Probation Officer under the Probation of Offenders Act, 1958

(XX of 1958), and any other report or representation which may be made to it or him as to the desirability of the detention, satisfy itself or himself that the character, state of health and mental condition of the person convicted and the other circumstances of the case are such that the person convicted is likely to profit by such detention.

(4) When an order for detention is made under this Act, the ground for such detention shall be recorded and a copy thereof shall be furnished to the person ordered to be detained free of cost.

6. Power of Superintendent of Prison to present adolescent offender before Sessions Judge for detention :-

Whenever it appears to the Superintendent of a Prison that any adolescent offender confined in the prison should, for the reasons mentioned in sub-section (3) of Section 5, be detained, he shall send a report to this effect to and cause the adolescent offender to be produced before the Sessions Judge of the sessions division in which the prison is situate and if the Sessions Judge after making such inquiry as may be prescribed and such further inquiry as he may consider necessary, is satisfied that the adolescent offender should, for the reasons mentioned in the said sub-section be detained, he may order the adolescent offender to be removed from the prison and detained for a period equal to the unexpired term of the imprisonment to which he was sentenced or equal to the unexpired portion of the period for which he was required to give security, as the case may be:

Provided that in no case shall he be detained for more than five years.

7. When action may not be taken under section 6 :-

No order shall be made under the provisions of Section 6-

(i) until the time allowed by law for appeal against the sentence or order under which the prisoner is committed to or confined in prison, has expired or, if an appeal has been preferred or a revision is pending until such appeal or revision has been disposed of; 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(VIII of 1897); or

(iv) if the unexpired term of the imprisonment to which the prisoner was sentenced, or if the period for which security was required from him is less than one year; or

(v) unless the provisions of sub-section (3) of Section 5 have been complied with.

8. Application of the Code of Criminal Procedure, 1898, and the Indian Limitation Act, 1908 and provisions of appeal and revision :-

(1) Subject to the provision of sub-section (2) the provision of the Code of Criminal Procedure, 1898 (V of 1898) relating to appeal, reference and revision and articles 154 and 155 of the Indian Limitation Act, 1908 (IX of 1908), shall apply in the case of an order of detention as if the order had 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 (V of 1898), in case of an adolescent offender, an appellate court or the High Court in exercise of its powers of revision, may, in pursuance of subsection (1) and the provisions of that Code, 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 that Code to an order of detention if, for reasons mentioned in sub-section (3) 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 the said Section 123, as the case may be:

Provided that-

(i) the sentence of imprisonment, order of commitment or detention shall not be in excess of the powers of the trial court or Magistrate; and (ii) before making such order the court shall give the said person or his parent or guardian a reasonable opportunity of being heard.

(3) Any person who has been ordered to be detained in a Borstal Institution for a period to expire after the term of the imprisonment to which he was sentenced would expire had the order not been passed, may appeal to the court of session, and such court 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 he was sentenced.

(4) Any person ordered by a court of session under the provision of subsection (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 appeal within sixty days of the order to the High Court and the High Court may pass any such order as the court of sessions might have passed.

9. Release on furnishing security :-

Any person detained for failure to furnish security shall be released on furnishing the security.

10. Inquiry to be made regarding age before the passing of

an order of detention :-

(1) Before passing an order of detention under this Act, the Court, Sessions Judge or Magistrate as the case may be, shall inquire, or cause an inquiry to be made into the question of the age of the person convicted or failing to obey an order to give security under section 106, or under section 118 or Section 126A of the Code of Criminal Procedure, 1898 (V of 1898) and after taking such evidence if any, in regard thereto as may be deemed necessary or proper shall record a finding thereon.

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order of detention under this Act before submitting the record and forwarding the accused to the Sessions Judge as required by subsection (2) of Section 5.

11. Additional Sessions Judge to have power of Sessions Judge :-

The Sessions Judge may transfer any matter or proceeding pending before him under this Act to an Additional Sessions Judge for disposal and on such transfer being made the Additional Sessions Judge shall exercise in regard thereto the same powers as are vested in the Court of Session or the Sessions Judge by or under this Act.

12. Detention for the first time not to be regarded as a disqualification :-

The detention of a person for the first time under the provisions of this Act shall not be regarded as a conviction for the purpose of any disqualification attaching to a conviction for any offence.

13. Power to release on certificate :-

Subject to the order of the State Government, the Visiting Committee, with the sanction of the Director of Borstal Institutions, may at anytime after the expiration of six months, or in the case of women, three months from the commencement of the term of detention, if satisfied that the inmate is likely to abstain from crime and to lead a useful and industrious life, by certificate permit him

to be discharged from the Borstal Institutions on condition that he be placed under the supervision or authority of such servant of the Government or such secular institution or such person or religious society belonging to the same religion as the inmate named in the certificate who may be willing to take charge of him. A certificate granted under this section shall remain in force until the term for which the inmate was ordered to be detained has expired unless sooner suspended, revoked or forfeited.

14. Absence under certificate to be counted towards period of detention :-

The time during which an inmate is absent from a Borstal Institution in accordance with certificate granted under section 13 shall be reckoned as part of the period of detention.

15. Form of certificate :-

Every certificate granted under the provisions of Section 13 shall be in such form and shall contain such conditions as the State Government may by general or special order, direct.

16. Suspension and revocation of certificate :-

Subject to any general or special direction of the State Government a certificate granted under section 13 may be suspended for a period not exceeding three months by the Superintendent and may be suspended or revoked at any time by the Visiting Committee. When the certificate 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 by any police officer not below the rank of a Sub-Inspector and admitted to the Institution.

17. Penalty of 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 certificate from a Borstal Institution escapes from the supervision or authority of any servant of the Government or secular institution or person or religious society in whose charge he was placed, or fails on the suspension or revocation of his certificate 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 certificate, if any, 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 meaning of the Code of Criminal Procedure, 1898 (V of 1898).

18. Incurrigibles :-

Where an inmate is reported to the State Government by Visiting Committee to be incurrigible or to be exercising bad influence on the other inmates of the institution or is convicted under section 17 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 State Government in pursuance of the provisions of clause (n) of Section 31 of this Act, the State Government may commute the residue of the term of detention to such term of imprisonment of either description not exceeding such residue as the State Government may direct and may order the transfer of the inmate to any jail in Bihar in order to complete the said term of imprisonment.

19. Persons appointed officers to be public servant :-

Persons appointed to be officers under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (XLV of 1860).

20. Special accommodation :-

If accommodation in a Borstal Institution is not immediately available for a person ordered to be detained he may be detained in such special ward or other suitable part of a prison as the State Government may by general or special order direct until he can be sent to a Borstal Institution and the period of detention so undergone shall be treated as detention in a Borstal Institution.

21. Extramural custody, control and employment of inmates :-

An inmate when being taken to or from any Borstal Institution in which he may be lawfully detained or when working outside or being otherwise beyond the limits thereof in or under the lawful custody of control of an officer of such Borstal Institution shall be deemed to be under detention and shall be subject to same

incidents as if he were actually in a Borstal Institution.

22. Penalty for introduction or removal of prohibited articles :-

Whoever, contrary to any rule made under section 31 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 articles, and every officer of a Borstal Institution who contrary to 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 a Borstal Institution, and whoever, contrary to any such rule, communicates or attempts to communicate with any inmate, and whoever abets the commission of any of the aforesaid acts, shall on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding two hundred rupees or to both.

23. Powers to arrest for offences under Section 22 :-

When any person in the presence of any officer commits any offence specified in the last foregoing section and refuses on demand of such officer to give his name and address or gives a name or address which such officer knows, or has reason to believe, to be false, such officer may arrest him or cause him to be arrested, and shall without unnecessary delay make him over to police officer, and thereupon such police officer shall proceed as if the offence had been committed in his presence.

24. Publication of penalties :-

The Superintendent shall cause to be affixed, in a conspicuous place outside the Borstal Institution a notice setting forth the acts prohibited under section 22 and the penalties which may be incurred by their commission.

25. Superintendent to detain person duly committed to his custody :-

The Superintendent 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 accordance with law.

Explanation.--For the purpose of this section and Sections 26, 27 and 29 the expression "Superintendent" shall include any person who is for the time being in charge of the Borstal Institution.

26. Superintendent to return orders, etc., after execution or discharge :-

The Superintendent 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 or the Sessions Judge 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.

27. Power of Superintendent to give effect to order of certain courts :-

The Superintendent shall give effect to any order for the detention of any person passed or issued by any court or tribunal in any part of India.

28. Warrant of officers of certain 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 27 shall be sufficient authority for detaining any person in pursuance of the order passed upon him.

29. Procedure where Superintendent doubts the legality of order sent to him for execution :-

(1) Where the Superintendent 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 State Government by whose order on the case he and all other public officers shall be guided as to the future disposal of the inmates.

(2) Pending a reference under sub-section (1), the inmate shall be detained in accordance with the directions specified in the order of detention.

30. Lunatic inmate, how to be dealt with :-

(1) Where it appears to the State Government that an inmate of a Borstal Institution is of unsound mind, the State Government may order him to be removed to a mental hospital or other place of safe custody within the State, there to be kept and treated during the remainder of the term for which he has been ordered to be detained, and 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 he shall be so detained until he is discharged according to law.

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

(3) The provisions of Section 31 of the Indian Lunacy Act, 1912 (IV of 1912) shall apply to every person confined in a mental hospital under sub-section (1) 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 mental hospital under that subsection 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 State Government is competent under sub-section (1) to order the removal of an inmate to a mental hospital or other place of safe custody within the State, the State Government may order his removal to any such hospital or place within any other State by agreement with the Government of such other State 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.

31. Power to make rules :-

(1) The State Government may after previous publication make rules consistent with this Act-

(a) 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;

(b) for the regulation by number or otherwise of the inmates to be detained in each class of institution;

(c) for defining the powers and duties of the Director of Borstal Institutions;

(d) for the government of Borstal Institutions, and the appointment, conditions of service, guidance, control, punishment & dismissal of superintendents and other officers employed in Borstal Institutions, and for the defining of their responsibilities, duties, disabilities and power;

(e) for the maintenance of records and the preparation and submission of reports;

(f) 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;

(g) for the temporary detention of inmates until arrangement can be made for their admission to a Borstal Institution;

(h) for the admission, removal and discharge of inmates, and for the disposal of their effects during their detention;

(i) for feeding, clothing and bedding of inmates;

(j) for the custody, discipline, grading, treatment, education, training and control of inmates;

(k) for the employment, instruction and control of inmates within or without Borstal Institutions and the disposal of the proceeds of their labour;

(l) for the treatment of sick inmates;

(m) for classifying and prescribing the forms of education, instruction, employment and labour and regulating the periods of rest;

(n) (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 punishments admissible under this Act which shall be awardable for the commission of the various Borstal Institution offences or the classes thereof;

(iv) for declaring the circumstances in which acts constituting both a Borstal Institution offence and an offence under Indian Penal Code, 1860 (XIV of 1860) may or may not be dealt with as Borstal Institution offence;

(v) for the award of marks and the shortening of periods 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; and

(viii) for regulating the transfer from one part of India to another of inmates whose term of detention is about to expire;

(o) for defining articles the introduction or removal of which into or out of Borstal Institutions without due authority is prohibited;

(p) for the classification and the separation of inmates;

(q) for rewards for good conduct;

(r) for regulating the transfer of inmates from one Borstal Institution to another or to a hospital and from a Borstal Institution to a prison or from a prison to a Borstal Institution;

(s) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in Borstal Institutions;

(t) for regulating the transmission of appeals and petitions from inmates and their communications with their friends;

(u) for the appointment and guidance of visitors of Borstal Institutions;

(v) for prescribing conditions on which certificate may be granted, suspended, revoked, or cancelled;

(w) for the appointment, powers and control of servants of the Government referred to in Section 13;

(x) for defining the powers and duties of after-care societies and guardians and the conditions on which financial assistance may be given to them;

(y) for the appointment of visiting committees; and

(z) generally for the purpose of carrying out the provisions of this Act.

(2) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.