

Madras Borstal Schools Act, 1925

05 of 1926

[20 July 1926]

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PREAMBLE

An Act to make provision for the establishment and regulation of Borstal schools for the detention and training of adolescent offenders.

Whereas it is expedient to make provision for the establishment and regulation of Borstal schools in the Presidency of Madras for the detention and training of adolescent offenders therein; and whereAs the previous sanction of the Governor-General under section 80-A of the Government of India Act has been obtained to the passing of this Act;

It is hereby enacted as follows:-

1. For Statement of Objects and Reasons, see Fort St. George Gazette, Part IV, dated 17th March 1925, pages 98-99; for Report of the Select Committee, see Appendix IV, pages 355-365 of Volume XXVI of the Madras Legislative Council Proceedings; for Proceedings in Council, see Proceedings, dated 19th and 20th August 1925, pages 249, 254, 356-362 of Volume XXIV, *ibid*; dated 16th and 17th December 1925, pages 312-346, 397-435 of Volume XXVI, *ibid*.

This Act was extended to the merged State of Pudukkottai by section 3 of, and the First Schedule to, the Madras Merged States (Laws) Act, 1949 (Madras Act XXXV of 1949).

This Act was extended to the Kanyakumari district and the Shencottah taluk of the Tirunelveli district by section 3 of, and the Schedule to, the Madras (Transferred Territory) Extension of Laws Act, 1957 (Madras Act XXII of 1957) repealing the corresponding law in force in that territory.

PART 1 PRELIMINARY

1. Short title :-

(1) This Act may be called the "Madras Borstal Schools Act, 1925."

(2) The ¹[State Government] may, by notification, from time to time, apply the whole or any of the provisions of this Act to adolescent offenders or any class thereof in any local area in the Presidency of Madras, from such date as may be specified in the notification and may cancel or modify such notification.

1. The words "Provincial Government" were substituted for the word "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

2. Definitions :-

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

(1) "Adolescent offender" means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under section 118 of the Code of Criminal Procedure has failed to do so and who at the time of such conviction or failure to give security is not less than 16 nor more than 21 years of age;

(2) "Borstal school" is a corrective institution wherein adolescent offenders, whilst detained in pursuance of this Act, are given such industrial training and other instruction and are subjected to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime;

(3) "Inspector-General" shall mean the Inspector-General of Prisons and shall include any officer appointed by the ¹[State Government] to perform all or any of the duties imposed by this Act on the Inspector-General.

2[(4) "Probation officer" means a person appointed to be a probation officer under the Madras Probation of Offenders Act, 1936 (Madras Act III of 1937).]

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

2. This clause was added by section 2 of the Madras Borstal Schools (Amendment) Act, 1951 (Madras Act XI of 1951).

3. Establishment of Borstal schools :-

(1) For the purposes of this Act, the **1**[State Government] may establish one or more Borstal schools.

(2) For every Borstal school a Visiting Committee shall be appointed by the **1**[State Government].

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

4. Rules :-

(1) The **1**[State Government] may **2**[after previous publication] make rules for the purposes of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may be made with regard to-

3[(a)] the appointment, powers and duties of officials in such schools;

3[(b)] the **4**[. . .], treatment maintenance, education, industrial training and control of the inmates;

5[(c) the grant of permission to the inmates to absent themselves for short periods;

(d) visits to and communications with the inmates; **6**()]

(e) the temporary detention of adolescent offenders until arrangements can be made for sending them to Borstal schools;\

7[(f) the powers and duties of probation officers under this Act.]

(3) All rules made under this Act **8**[. . .] shall be published in the **9**[Official Gazette] and on such publication shall have effect as if enacted in this Act.

10[* * * * *]

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

2. These words were inserted by section 2(i) of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936).

3. Original clauses (a) and (c) of sub-section (2) were omitted and the original clauses (b) and (d) were re-lettered as clauses (a) and (b), respectively by section 2(ii)(a), *ibid*.

4. The word "classification" was omitted by section 2(ii)(b), *ibid*.

5. Clauses (c) and (d) were inserted by section 2(iii) of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936).

6. The word "and" at the end of clause (d) was omitted by section

3 of the Madras Borstal Schools (Amendment) Act, 1951 (Madras Act XI of 1951).

7. This clause was added by section 3, *ibid*.

8. In sub-section (3) the words "except those referred to in the subsection following" were omitted by section 2(iv) of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936).

9. These words were substituted for the words "local official gazette" by the Adaptation Order of 1937.

10. Sub-section (4) was omitted by section 2(v) of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936).

5. Application of the Prisons Act, 1894, and Prisoners Act, 1900 :-

Subject to any alterations, adaptations and exceptions made by this Act and the rules framed under it, the Prisons Act, 1894 (Central Act IX of 1894), and the Prisoners Act, 1900 (Central Act III of 1900), and the rules framed thereunder shall apply in the case of every Borstal school established under this Act as if it were a prison and the inmates prisoners.

6. Courts empowered under this Act :-

The powers conferred on Courts by this Act shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, (d) a Sub-divisional Magistrate, (e) a salaried Presidency Magistrate¹[or any other Presidency Magistrate empowered by the²(State) Government to sit singly] and (f) any Magistrate of the first class or any bench of Magistrates constituted under section 15 of the Code of Criminal Procedure (Central Act V of 1938), 1898, invested with the powers of a Magistrate of the first class specially empowered by the³[State Government] in that behalf; and may be exercised by such Courts whether the case comes before them originally, on appeal, or in revision.

1. These words were inserted by section 2 of the Madras Borstal Schools (Amendment) Act, 1938 (Madras Act XI of 1938).

2. This word was substituted for the word "Provincial" by the Adaptation Order of 1950.

3. The words "Provincial Government" were substituted for the

words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

7. Procedure when Magistrate is not empowered to pass sentence under this Act :-

(1) When any Magistrate not empowered to pass sentence under this Act is of opinion that an adolescent offender is a proper person to be detained in a Borstal school he may, without passing sentence, record such opinion and submit his proceedings ¹[and forward the adolescent offender-

(a) in case the Magistrate is a Presidency Magistrate to the Chief Presidency Magistrate or if he has designated a salaried Presidency Magistrate in this behalf by general or special order, to such salaried Presidency Magistrate; and

(b) in other cases, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.].

(2) ²[The Magistrate to whom the proceedings are so submitted] may make such further inquiry (if any) as he may think fit and may pass such sentence or order dealing with the case as he might have passed if such adolescent offender had originally been tried by him.

1. This was substituted for the words "and forward the adolescent offender to the District Magistrate Or Sub-divisional Magistrate to whom he is subordinate" by section 3(i) of the Madras Borstal Schools (Amendment) Act, 1938 (Madras Act XI of 1938).

2. These words were substituted for the words "The District Magistrate Or Sub-divisional Magistrate to whom the proceedings are so submitted" by section 3(ii) of the Madras Borstal Schools (Amendment) Act, 1938 (Madras Act XI of 1938).

PART 2 COMMITTAL TO BORSTAL SCHOOLS

8. Power of Court to pass sentence of detention in Borstal school :-

Where it appears to a Court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with persons of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it shall be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal school for a term which shall not be less than two years and shall not exceed five years ¹[but in no case extending beyond the date on which the adolescent offender will, in the opinion of the Court, attain the age of twenty-three years]:

Provided that, before passing such sentence, the Court shall consider any report or representation which may be made to it ²[(including any report or representation made by the probation officer of the area in which the offender permanently resided at the time when he committed the offence)]

as to the suitability of the case for treatment in a Borstal school and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline as aforesaid.

1. These words were added by section 3 of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936)

2. The portion within square brackets was inserted by section 4 of the Madras Borstal Schools (Amendment) Act, 1951 (Madras Act XI of 1951).

9. Limitation on powers conferred by section 8 :-

Any person detained in a Borstal school for failure to furnish security when ordered to do so under section 118 of the Code of Criminal Procedure, 1898 (Central Act V of 1898), shall be released on furnishing such security or on the passing of an order under section 124 of the Code.

10. Power of Inspector-General to transfer prisoners to Borstal schools :-

The Inspector-General may, subject to rules made by the ¹[State Government], if satisfied that any adolescent offender undergoing imprisonment in consequence of a sentence passed either before or

after the passing of this Act might with advantage be detained in a Borstal school, direct that such person shall be transferred from prison to a Borstal school, there to serve the whole or any part of the unexpired residue of his sentence. The provisions of this Act shall thereupon apply to such person as if he had been originally sentenced to detention in a Borstal school.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

10A. Power of State Government to transfer offenders sentenced to transportation to Borstal schools :-

¹[The ²[State] Government may, if satisfied that any offender who has been sentenced to transportation either before or after the passing of the Madras Borstal Schools (Amendment) Act, 1939 (Madras Act XIII of 1939), and who at the time of conviction was not less than 16 nor more than 21 years of age, might with advantage be detained in a Borstal school, direct that such offender shall be transferred to a Borstal school, there to serve the whole or any part of the unexpired residue of his sentence. The provisions of this Act shall apply to such offender as if he had been originally sentenced to detention in a Borstal school.

An order may be made under this section notwithstanding that the sentence of transportation has been subsequently commuted into a sentence of imprisonment].

1. This section was inserted by section 2 of the Madras Borstal Schools (Amendment) Act, 1939 (Madras Act XIII of 1939).

2. This word was substituted for the word "Provincial" by the Adaptation Order of 1950.

11. Preliminary inquiry and finding as to age of adolescent offender :-

(1) Before passing a sentence under section 8, the Court shall inquire into the age of the offender and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon stating his age as nearly as may be.

(2) A similar inquiry shall be made and finding recorded by every magistrate not empowered to pass sentence under section 8 before submitting his proceedings and forwarding an adolescent offender¹[to the Chief Presidency or other salaried Presidency Magistrate or the District or Sub-divisional Magistrate] as required by sub-section (1) of section 7.

1. These words were substituted for the words "to the District Magistrate or Sub-divisional Magistrate" by section 3(1) of, and the Second Schedule to, the Madras Repealing and Amending Act, 1951 (Madras Act XIV of 1951).

12. Government to determine the Borstal school to which adolescent offender shall be sent :-

Every adolescent offender directed by a Court to be sent to a Borstal school shall be sent to such Borstal school as the¹[State Government] may, by general or special order, appoint for the reception of adolescent offenders so dealt with by such Court:

Provided that, if accommodation in a Borstal school is not immediately available for such adolescent offender, he may be detained in a special ward or such other suitable part of a prison as the¹[State Government] may direct until he can be sent to a Borstal school. The period of detention so undergone shall be treated as detention in a Borstal school.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

13. Removal from one school to another :-

The Inspector-General may at any time order an inmate to be removed from one Borstal school to another, provided that the whole period of his detention in a Borstal school shall not be increased by such removal.

13A. Reception of offenders from, and transfer of offenders to other States in India :-

¹[(1) The State Government may, by general or special order

notified in the Fort St. George Gazette, direct that any specified Borstal school in this State shall be available for the reception of adolescent offenders in respect of whom a sentence of detention in a Borstal School or other school of a like nature has been passed by any Court or Magistrate in ²[any other part of India;] and thereupon, provision may be made for the removal of the adolescent offenders concerned accordingly:

Provided that no such order shall be made without the consent of the Government of the ³[other State concerned or the Central Government, as the case may be].

(2) The State Government may direct any inmate of a Borstal school in this State to be transferred to any Borstal school or other school of a like nature in ²[any other part of India]:

Provided that no such transfer shall be made without the consent of the Government of the ³[other State concerned or the Central Government, as the case may be.]

(3) The State Government may consent to the transfer to a Borstal school in this State, of a person detained in any Borstal school or other school of a like nature in ²[any other part of India.]

(4) The provisions of this Act shall apply to any person who is removed or transferred to a Borstal school in this State in pursuance of sub-section (1) or sub-section (3), as if he had been originally sentenced to detention in a Borstal school in this State.]

1. This section was inserted by section 5 of the Madras Borstal Schools (Amendment) Act, 1951 (Madras Act XI of 1951).

2. These words were substituted for the words "any other State in India", by section 4 of, and the Third Schedule to, the Madras Repealing and Amending Act, 1957 (Madras Act XXV of 1957).

3. These words were substituted for the words "other State concerned", by section 4 of, and the Third Schedule to, the Madras

Repealing and Amending Act, 1957 (Madras Act XXV of 1957).

14. Transfer of incorrigible etc., to prisons :-

Where a person detained in a Borstal school is reported to the ¹[State Government] by the ²[Superintendent] of Such school to be incorrigible or to be exercising a bad influence on the other inmates of the school ¹[or in the case of a person directed to be sent to a Borstal school before the commencement of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936), to be over twenty-three years of age], the ¹[State Government] may commute the unexpired residue of the term of detention to such term of imprisonment of either description as the ¹[State Government] may determine, but in no case exceeding

(a) such unexpired residue, or

(b) the maximum period of imprisonment fixed for the offence or the failure to give security as the case may be, or

(c) the maximum period of imprisonment which the Court that tried him had authority to award under the Code of Criminal Procedure, 1898 (Central Act V of 1898), whichever is shortest.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

2. This word was substituted for the words "Visiting Committee" by section 6 of the Madras Borstal Schools (Amendment) Act, 1951 (Madras Act XI of 1950).

PART 3 RELEASE ON LICENCE

15. Power to release on licence :-

(1) Subject to any general or special directions of the ¹[State Government] the Inspector-General, on the recommendation of the Visiting Committee, may, at any time after the expiration of six months from the commencement of the term of detention, if

satisfied that there is a reasonable probability that the inmate will abstain from crime and lead a useful and industrious life, by licence permit him to be discharged from the Borstal school on condition that he be placed under the supervision or authority of any Government officer, or secular institution, or person, or religious society professing the same religion as the inmate, named in the licence who may be willing to take charge of him.

(2) A licence under this section shall be in force until the term for which the offender was sentenced to detention has expired, unless sooner revoked or forfeited.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

16. Form of licence :-

Every licence granted under section 15 shall be in such form and shall contain such conditions as the ¹[State Government] may by rules direct.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

17. Revocation of licence :-

Subject to any general or special directions of the ¹[State Government] a licence granted under section 15 may be revoked at any time by the Inspector-General and where a licence has been revoked the person to whom the licence related shall return to the Borstal school.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

18. Escape and forfeiture of licence :-

If any inmate escapes from a Borstal school or if any inmate absent on licence from a Borstal school removes himself from the supervision of the society or person in whose charge he is placed or fails to return from such supervision to the Borstal school, a police officer not below the rank of a Sub-Inspector of Police may, without orders from a Magistrate and without warrant, arrest him and take him back to the Borstal school and his licence shall be forfeited with effect from the date of his escape or failure to return as the case may be.

19. Absence under licence to be counted towards period of detention :-

The time during which a person is absent from a Borstal school under a licence shall be treated as part of the term of his detention in the school; provided that where that person has failed to return to the school on the licence being forfeited or revoked, the time which elapses after his failure so to return shall be excluded in computing the term during which he is to be detained in the school.

19A. Management of Borstal schools :-

¹[Subject to the orders of the Inspector-General and subject also to the rules made by the ²[State Government] the control and management of every Borstal school shall vest in a Superintendent appointed by the ²[State Government].

1. Part III-A was inserted by section 5 of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936).

2. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

PART 3A CONTROL AND MANAGEMENT OF BORSTAL SCHOOLS

19B. Constitution, powers and duties of Visiting Committees :-

(1) (a) Every Visiting Committee appointed under sub-section (2) of section 3 shall consist of the Sessions Judge, the District Magistrate, the District Educational Officer of the district in which the school is situated and four non-official members appointed by

the ¹[State Government].

(b) The non-official members shall hold office for a period of two years but shall be eligible for re-appointment on the expiry of that period.

(2) It shall be the duty of the Visiting Committee and its members-

(a) to visit the school either individually or collectively on such occasions as may be fixed by the rules made under this Act in that behalf for the purpose of ensuring that the provisions of this Act are duly given effect to;

(b) to make such suggestions for the improvement of the training therein as are considered necessary and to report to the ¹[State Government] or to the Inspector-General from time to time any matter, which, in their opinion, should receive attention and annually on the progress of the school;

(c) to interview the inmates immediately after their arrival and to make suggestions, if any, as to the special training which each should receive;

(d) to consider cases of release on licence under subsection (1) of section 15 placed before them by the Superintendent; and

(e) to consider such action as may be necessary in regard to the inmates whose term of detention is about to expire.

(3) Subject to such rules as may be made in that behalf by the ¹[State Government] every member of the Committee shall be entitled to call for information from the Superintendent, to examine the records of the school and to take such other action as he deems necessary for the due discharge of his duties.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

19C. Classification of inmates :-

(1) The inmates of a Borstal school shall be divided by the Superintendent according to their industry and good conduct into four grades, namely:-

(1) the penal grade,

(2) the ordinary grade,

(3) the star grade,

(4) the special star grade.

(2) The privileges of each grade shall be higher than those of the grade preceding, if any.

(3) Every inmate shall, on reception in a Borstal school, be placed in the ordinary grade.

(4) The Superintendent may promote or reduce any inmate from one grade to another in accordance with the provisions of sub-section (5), the rules made under this Act and the general instructions of the Visiting Committee.

(5) Promotions and reductions shall be regulated by close personal observation of the inmates and shall depend specially on their general behaviour, amenability to discipline and attention to instructions both literary and industrial.

19D. Punishments for offences :-

(1) The punishments which may be inflicted on an inmate of a Borstal school for offences specified in the Prisons Act, 1894 (Central Act IX of 1894), and the rules made thereunder, shall be in the following forms and in no other:-

(i) Formal warning.

(ii) Extra drill.

(iii) Deprivation of any of the privileges of the grade.

(iv) Reduction in grade.

(v) Cuts on the hand by a rattan not exceeding six on each hand.

(vi) Whipping, provided that the number of stripes shall not exceed eighteen.

(2) No punishment shall be awarded to any inmate by any official of the school except by the Superintendent or in his absence the official exercising his functions.

19E. Limitation of hours of work :-

No inmate of a Borstal school shall be made to work for more than eight hours a day:

Provided that extra drill awarded as a punishment under sub-section (1) of section 19-D shall not be deemed, for the purposes of this section, to be work.

¹[]

1. Section 19-F was omitted by section 7 of the Madras Borstal

Schools (Amendment) Act, 1951 (Madras Act XI of 1951).

PART 4 APPEAL AND REVISION

20. Appeal and revision :-

For purposes of appeal and revision under the Code of Criminal Procedure, 1898 (Central Act V of 1898), a sentence of detention under section 8 of this Act shall be deemed to be a sentence of imprisonment for the same period.

Any person affected by an order of the Inspector-General under this Act may appeal to the ¹[State Government] whose orders shall be final.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

PART 5 MISCELLANEOUS

21. Minimum age-limit of adolescents in areas to which the Madras Children Act, 1920 has not been extended :-

In areas to which the Madras Children Act, 1920 (Madras Act IV of 1920), has not been extended the figure 16 appearing in section 2(1) of the Act shall be read as 15.

21A. Power of State Government to discharge inmates :-

²[The ¹(State Government) may at any time order the discharge of an inmate of any Borstal school either absolutely or subject to such conditions as they may think fit.]

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

2. Section 21-A was inserted by section 6 of the Madras Borstal Schools (Amendment) Act, 1936 (Madras Act XIX of 1936).

22. Removal of disqualification attaching to convictions for offences :-

The conviction of an adolescent shall not be regarded as a conviction for the purposes of any disqualification attaching to a conviction for any offence.