

T A S M A N I A.



1895.

ANNO QUINQUAGESIMO-NONO

VICTORIÆ REGINÆ,

No. 10.



AN ACT for the prevention of Cruelty to, A.D. 1895.
and better protection of, Children.

[27 September, 1895.]

WHEREAS it is expedient to make provision for the prevention of cruelty to Children : **PREAMBLE.**

Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 In this Act, unless the context indicates otherwise, the word— **Interpretation.**

“Court” shall mean the Supreme Court of *Tasmania* :

“Local authority” shall mean any Municipal Council or Town Board, or any Court of Petty Sessions in any District not being within the jurisdiction of any Municipal Council or Town Board.

2—(1.) Any person over Sixteen years of age who, having the custody, control, or charge of a child under the age of Fifteen years, wilfully ill-treats, neglects, abandons, or exposes such child, or causes or procures such child to be ill-treated, neglected, abandoned, or exposed in a manner likely to cause such child unnecessary suffering or injury to its health, shall be guilty of a misdemeanor, and on conviction thereof shall be liable, at the discretion of the Court, to a fine not exceeding One hundred Pounds, or alternatively, or in default of payment of such fine, or in addition to payment thereof, to imprisonment, with or without hard labour, for any term not exceeding Two years ; and on conviction thereof by a Court of Summary Jurisdiction in manner

Punishment for ill-treatment and neglect of children.

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provided by *The Magistrates Summary Procedure Act*, shall be liable, at the discretion of the Court, to a fine not exceeding Twenty-five Pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding Six months.

(2.) A person may be convicted of an offence under this Section notwithstanding the death of the child in respect of whom the offence is committed.

Power to increase fine where offender interested in death of child.

(3.) If it be proved that a person convicted under this Section was interested in any sum of money accruable or payable in the event of the death of the child, and had knowledge that such sum of money was accruing or becoming payable, the Court may in its discretion increase the amount of the said fine so that the fine shall not exceed Two hundred Pounds, or may sentence the person convicted to imprisonment for any term not exceeding Five years. Such interest as aforesaid in any sum of money accruable or payable in the event of the death of the child shall be charged in the information and put to the jury in the same way, as far as may be, as a previous conviction is now charged and put.

Restrictions on employment of children.

3 Any person who—

- i. Causes or procures any child under the age of Fifteen years to be in any street for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise ; or
- ii. Causes or procures any child under the age of Fifteen years to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between Nine P.M. and Five A.M.; or
- iii. Causes or procures any child under the age of Twelve years to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, for the purpose of singing, playing, or performing for profit, or to be on the streets between the hours of Seven P.M. and Six A.M. for the purpose of offering anything for sale,—

shall on conviction thereof by a Court of Summary Jurisdiction in manner provided by *The Magistrates Summary Procedure Act*, be liable, at the discretion of the Court, to a fine not exceeding Twenty-five Pounds, or alternatively, or in default of payment of the said fine, or in addition thereto, to imprisonment, with or without hard labour, for any term not exceeding Three months.

Provided, that any local authority may, if they think it necessary or desirable so to do, from time to time by By-law extend or restrict the hours mentioned in Sub-sections ii. and iii. of this Section, either on every day or on any specified day or days of the week, and either as to the whole of their district or as to any specified area therein.

Taking of offender into custody, and protection of children.

4—(1.) Any constable may take into custody without warrant any person who, within view of such constable, commits an offence under this Act, where the name and residence of such person are unknown to such constable and cannot be ascertained by such constable ; and any constable may take to a place of safety any child in respect of whom an offence under Section Two or Sub-section i. of Section Three of this Act has been committed, and the child may there be detained

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until it can be brought before a Court of Summary Jurisdiction ; and such Court may cause the child to be dealt with as circumstances may admit and require, until the charge made against any person in respect of the said offence has been determined by the committal for trial, or conviction, or discharge of such person. A.D. 1895.

(2.) Where a constable arrests any person without warrant in pursuance of this Section, the Inspector or constable in charge of the Station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested, on his entering into such a recognizance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

5—(1.) Where a person having the custody or control of any child, being a boy under the age of Fourteen or a girl under the age of Fifteen years, has been— Disposal of child
by order of Court.

- I. Convicted of committing in respect of such child an offence under Section Two of this Act, or any offence involving bodily injury to the child, and punishable with penal servitude ; or

II. Committed for trial for any such offence ; or

III. Bound over to keep the peace towards such child ;

any person may bring such child before a Police or Stipendiary Magistrate, or any Two Justices of the Peace sitting in Petty Sessions, and such Magistrate or Justices of the Peace, if satisfied on inquiry that it is expedient so to deal with the child, may order that the child be taken out of the custody of such person and committed to the charge of a relation of the child, or some other fit person named by the Magistrate or Justices, such relation or other person being willing to undertake such charge until it attains the age of Fourteen years, or, in the case of a girl, Fourteen years, or in either case for any shorter period ; and may, either upon or without the application of any person, from time to time renew, vary, and revoke any such Order : Provided, that no Order shall be made under this Section unless a parent of the child is under committal for trial for having been, or has been proved to have been, party or privy to the offence, or has been bound over to keep the peace towards such child.

(2.) Any person to whom a child is so committed shall, whilst the Order is in force, have the like control over the child as if he were its parent, and shall be responsible for its maintenance ; and the child shall continue under the control of such person notwithstanding that it is claimed by its parent. And any Court having power so to commit a child shall have power to make the like Orders on the parent of the child to contribute to its maintenance during such period as aforesaid as if the child were detained under any law relating to Industrial or Training Schools ; and such Orders may be made on the complaint or application of the person to whom the child is for the time being committed, and the sums contributed by the parent shall be paid to such person as the Court may name, and be applied for the maintenance of the child. In determining on the person to whom the child shall be so committed, the Court shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a person of the same religious persuasion, and such religious persuasion

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shall be specified in the Order; and in any case where the child has been placed, pursuant to any such Order, with a person not of the same religious persuasion as that to which the child belongs, the Court shall, on the application of any person in that behalf, and on its appearing that a fit person of the same religious persuasion is willing to undertake the charge, make an Order to secure his being placed with a person of the same religious persuasion. Provided, that if the Order to commit the child to the charge of some relation or other person be made in respect of any person having been committed for trial for an offence, the Court shall not be empowered to order the parent of the child to contribute to its maintenance prior to the trial of such person; and if he be acquitted of such charge, or if such charge be dismissed for want of prosecution, then any Order that may have been made under this Section shall forthwith be void, except with regard to anything which may have been lawfully done under it.

(3.) The Attorney-General may at any time, in his discretion, discharge a child from the custody of any person to whom it is committed in pursuance of this Section, either absolutely or on such conditions as he approves, and may, if he shall think fit, from time to time make, alter, or revoke rules in relation to children so committed to any person, and to the duties of such persons with respect to such children.

Power of search.

6—(1.) If it appears to any Police or Stipendiary Magistrate or to any Two Justices of the Peace, on information made before him or them on oath by any person who, in the opinion of the Magistrate or Justices, is *bonâ fide* acting in the interest of any child, being a boy under the age of Fourteen years, or a girl under the age of Sixteen years, has been or is being ill-treated or neglected in any place within the jurisdiction of such Magistrate or Justices in a manner likely to cause the child unnecessary suffering or to be injurious to its health, such Magistrate or Justices may issue a warrant authorising any person named therein to search for such child; and, if it is found to have been or to be ill-treated or neglected in manner aforesaid, to take it to and detain it in a place of safety until it can be brought before a Court of Summary Jurisdiction; and the Court before whom the child is brought may cause it to be dealt with in the manner provided by Section Four: Provided always, that the powers hereinbefore conferred on any Two Justices may be exercised by any One Justice if, upon the information, it appears to him to be a case of urgency.

(2.) The Magistrate, or Justices, or Justice issuing such warrant may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before a Justice, and proceedings to be taken for punishing such person according to law.

(3.) Any person authorised by warrant under this Section to search for any child, and to take it and detain it in a place of safety, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child therefrom.

(4.) Provided always, that every warrant issued under this Section shall be addressed to and executed by some Superintendent, Inspector, or other superior officer of Police, who shall be accompanied by the person making the information, if such person so desire, unless the Magistrate, Justices, or Justice otherwise direct, and may also, if the Magistrate, Justices, or Justice so direct, be accompanied by a Medical Practitioner.

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7 In any proceeding against any person for an offence under this Act, such person shall be competent, but not compellable, to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent, but not compellable, to give evidence.

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Evidence of accused person.

8 Where, in any proceeding against any person for an offence under this Act, the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not in the opinion of the Court or the Magistrate or Justices understand the nature of an oath, the evidence of such child may be received though not given upon oath if, in the opinion of the Court or the Magistrate or Justices, such child is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth. And the evidence of such child though not given on oath or affirmation, but otherwise taken and reduced into writing in accordance with the provisions of this Act, shall be deemed to be a deposition within the meaning of *The Magistrates Criminal Procedure Act*.

Evidence by child of tender years.

Provided that—

- i. A person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this Section, and given on behalf of the prosecution, is corroborated by some other material evidence in support thereof implicating the accused; and
- ii. Any child whose evidence is received as aforesaid, and who shall wilfully give false evidence, shall be liable to be prosecuted for such offence, and, on conviction thereof, may be punished in the manner provided by "The Juvenile Offenders Act."

9 Where a person is charged with an offence under this Act in respect of a child who is alleged in the charge or information to be under any specified age, and the child appears to the Court to be under that age, such child shall, for the purposes of this Act, be deemed to be under that age unless the contrary is proved.

Presumption of age of child.

10 Nothing in this Act contained shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child, to administer punishment to such child.

Act not to take away right of parent, &c. to administer punishment.

11 Where an offence against this Act is also punishable under any other Act, or at common law, it may be prosecuted and punished either under this Act or under the other Act, or at common law, so that no person be punished twice for the same offence.

Saving for proceedings under other Laws.

12 This Act may be cited as "The Prevention of Cruelty to, and Protection of, Children Act, 1895."

Short title.

The Acts of the Parliament of Tasmania [electronic resource]

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