

CHAPTER 31.

PREVENTION OF CRUELTY TO CHILDREN.

ARRANGEMENT OF SECTIONS

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- Acts of cruelty.
4. (1) If any person over the age of sixteen years, who has the custody, charge, or care of any child, wilfully assaults, ill-treats, neglects, abandons, or exposes such child or causes or procures such child to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb or organ of the body and any mental derangement), that person shall be guilty of a misdemeanour and shall be liable-
- Punishment.
- (a) on conviction before the Supreme Court to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment, with or without hard labour, for any period not exceeding two years; and
- (b) on summary conviction 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 period not exceeding six months;
- Interference of third party on behalf of child.
- And for the purposes of this section a parent or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause injury to his health if he fails to provide adequate food, clothing, medical aid, or lodging for the child.
- Death of child.
- (2) A person may be convicted of an offence under this section notwithstanding that actual suffering or injury to health, or the likelihood of such suffering or injury to health, was obviated by the action of another person.
- (3) 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.
- Suffocation of infants.
5. Where it is proved that the death of an infant under three years of age was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passages of the infant) whilst the infant was in bed with some other person over sixteen years of age, and that that other person was at the time of going to bed under the influence of drink, that other person shall be deemed to have neglected the infant in a manner likely to cause injury to its health within the meaning of this Ordinance.
- Abusing a girl under thirteen years of age.
6. Whosoever shall unlawfully and carnally know and abuse any girl under the age of thirteen, whether with or without her consent, shall be guilty of felony, and shall be liable on conviction before the Supreme Court to imprisonment, with or without hard labour, for any period not exceeding fifteen years.
- Abusing a girl between thirteen and fourteen years of age.
7. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of thirteen years and under the age of fourteen years, whether with or without her consent, shall be guilty of a misdemeanour, and shall be liable on conviction before the Supreme Court to imprisonment with or without hard labour, for any period not exceeding two years.

Allowing children to be in brothels.

8. If any person having the custody, charge, or care of a child above the age of four allows that child to reside in or to frequent a brothel, he shall be guilty of an offence, and shall be liable on summary conviction 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 period not exceeding six months.

Indecent assault and attempt to have carnal knowledge.

9. Whosoever commits an indecent assault on or attempts to have carnal knowledge of any girl under fourteen years of age shall be guilty of a misdemeanour, and shall on conviction before the Supreme Court be liable to imprisonment, with or without hard labour, for any period not exceeding two years.

Procuration.

10. Any person who procures or attempts to procure any child not being a common prostitute, or of known immoral character, to have unlawful carnal connection, either within or without the Queen's dominions, shall be guilty of misdemeanour, and shall be liable on conviction before the Supreme Court to imprisonment for any period not exceeding two years, with or without hard labour.

Offences by householders, etc.

11. Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly suffers any child to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known, shall be guilty of a felony, and shall be liable on conviction before the Supreme Court to imprisonment for any period not exceeding two years, with or without hard labour.

Abduction of girl for immoral purposes.

12. Any person who, with intent that any unmarried girl under the age of sixteen years should be unlawfully and carnally known, takes or causes to be taken such girl out of the possession and against the will of her father or mother or any other person having the lawful care or charge of her, shall be guilty of a misdemeanour, and shall be liable on conviction before the Supreme Court to be imprisoned for any period not exceeding two years, with or without hard labour.

Encouragement of seduction by guardian, etc.

13. (1) If any person having the custody, charge, or care of a child causes or encourages the seduction or prostitution or unlawful carnal knowledge of that child, he shall be guilty of a misdemeanour, and shall be liable on conviction before the Supreme Court to imprisonment, with or without hard labour, for any period not exceeding two years.

(2) For the purposes of this section a person shall be deemed to have caused or encouraged the seduction or prostitution or unlawful carnal knowledge (as the case may be) of a girl who has been seduced or become a prostitute or been unlawfully carnally known, if he has knowingly allowed the girl to consort with, or to enter or continue in the employment of any prostitute or person of known immoral character.

Corroboration in certain cases

14. No person shall be convicted of any offence under section 6, 7, 9 or 10 of this Ordinance upon the evidence of one witness, unless such witness be corroborated in some material particular by evidence implicating the accused.

Determination of age by the Court.

15. (1) Where a person, whether charged with an offence or not, is brought before any court otherwise than for the purpose of giving evidence, and it appears to the court that he is a child, the court shall make due enquiry as to the age of that person, and for that purpose shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the court, and the age presumed or declared by the court, to be the age of the person so brought before it shall, for the purposes of this Ordinance, be deemed to be the true age of that person and, where it appears to the court that the person so brought before it is of the age of sixteen years or upwards, that person shall, for the purposes of this Ordinance, be deemed not to be a child.

Presumption of age.

(2) Where in a charge or information for an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, it is alleged that the person by or in respect of whom the offence was committed was a child or was under or above any specified age, and he appears to the court to have been at the date of the commission of the alleged offence a child or to have been under or above the specified age, as the case may be, he shall for the purposes of this Ordinance be presumed at that date to have been a child or to have been under or above that age, as the case may be, unless the contrary is proved.

Defence of age.

(3) Where a person is charged with an offence under this Ordinance in respect of a person under or apparently under a specified age, it shall be a defence to prove that the person was actually of or over that age:

Provided always that when a person is charged with an offence under sections 7, 11 or 12 of this Ordinance, it shall be a sufficient defence if it appears to the court or jury that the person so charged had reasonable cause to believe that the girl was of or above the specified age.

PART III. - ARREST OF OFFENDERS AND PROTECTION OF CHILDREN

Power of Court to compel parent, etc., to enter into recognisance to look after girl.

16. (1) Where it is shown to the satisfaction of a court of summary jurisdiction, on the complaint of any person, that a child is, with the knowledge of her parent or guardian, exposed to risk of seduction or prostitution or of being unlawfully carnally known or living a life of prostitution, the court may adjudge her parent or guardian to enter into a recognisance to exercise due care and supervision in respect of the child.

Cap. 39.

(2) The provisions of the Criminal Procedure Ordinance, with respect to recognisances in courts of summary jurisdiction (including the provisions as to the enforcement thereof) shall apply to recognisances under this section.

Arrest without warrant.

17. (1) Any constable may take into custody without warrant, any person-

- a. who within view of the constable commits an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, where the name and residence of such person is unknown to the constable and cannot be ascertained by the constable, or
- b. who has committed, or who the constable has reason to believe has committed, an offence under this Ordinance or any of the offences mentioned in the schedule to this Ordinance, if he has reasonable ground for believing that such person will abscond, or if the name and address of such person are unknown to and cannot be ascertained by the constable.

Power of police to grant bail.

(2) Where a constable arrests any person without warrant in pursuance of this section, the Commissioner, the Assistant Commissioner or Superintendent or Assistant Superintendent or an Inspector, or Sub-Inspector of Police or the officer in charge of the police station to which such person is brought, or a District Commissioner shall, unless in his believe 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 recognisance, with or without sureties, as may in the judgment of the officer of police or District Commissioner be required to secure the attendance of such person upon the hearing of the charge.

Power of police to lodge child in place of safety till brought before the Court.

18. (1) A constable or any person authorised by a magistrate may take to a place of safety any child in respect of whom an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, has been, or there is reason to believe has been, committed.

Power of Court to order detention of child pending hearing.

(2) A child so taken to a place of safety, and also any child who seeks refuge in a place of safety, may there be detained until he can be brought before a court of summary jurisdiction, and that court may make such order as is mentioned in the next following sub-section, or may cause the child to be dealt with as circumstances may admit and require, until the charge made against any person in respect of any offence as aforesaid with regard to the child has been determined by the conviction or discharge of such person.

Power of Court to detain child.

(3) Where it appears to a court of summary jurisdiction that an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance has been committed in respect of any child who is brought before the court and that it is expedient in the interest of the child that an order should be made under this sub-section, the court may, without prejudice to any other power under this Ordinance, make such order as circumstances require for the care and detention of the child until a reasonable time has elapsed for a charge to be made against some person for having committed the offence, and, if a charge is made against any person within that time, until the charge has been determined by the conviction or discharge of that person, and in case of conviction for such further time not exceeding twenty-one days as the court which convicted may direct, and any such order may be carried out notwithstanding that any person claims the custody of the child.

Power of Court to order removal of child from custody of unsuitable person.

19. (1) Where a person having the custody, charge or care of a child has been-

- a. convicted of committing in respect of such child an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, or
- b. committed for trial for any such offence, or
- c. bound over to keep the peace towards such child, by any court,

that court either at the time when the person is so convicted, committed for trial or bound over, and without requiring any new proceedings to be instituted for the purpose, or at any other time, may, if satisfied on inquiry that it is expedient so to deal with the child, order that the child be taken out of the custody, charge or care of the person so convicted, committed for trial or bound over, and be committed to the care of a relative of the child or some other fit person named by the court (such relative or other person being willing to undertake such care), until he attains the age of sixteen years, or for any shorter period, and that court or any court of like jurisdiction may of its own motion, or on the application of any person, from time to time by order renew, vary and revoke any such order.

Limitation of power of Court to make such order when child has fit legal guardian.

(2) If the child has a parent or legal guardian, no order shall be made under this section unless the parent or legal guardian has been convicted of or committed for trial for the offence, or is under committal for trial for having been, or has been proved to the satisfaction of the court making the order to have been, party, or privy to the offence, or has been bound over to keep the peace towards the child or cannot be found.

Method of making such order.

Order void on acquittal.

(3) Every order under this section shall be in writing, and any such order may be made by the court in the absence of the child; and the consent of any person to undertake the care of a child in pursuance of any such order shall be proved in such manner as the court may think sufficient to bind him.

Power of Governor to order discharge of child and to make rules.

(4) Where an order is made under this section in respect of a person who has been committed for trial, then, if that person is acquitted of the charge, or if the charge is dismissed for want of prosecution, the order shall forthwith be void, except with regard to anything that may have been lawfully done under it.

Emigration.

(5) The Governor may at any time in his discretion discharge a child from the care of any person to whose care he is committed in pursuance of this section either absolutely or on such conditions as the Governor approves, and the Governor in Council may, if he thinks fit, make rules in relation to children so committed to the care of any person, and to the duties of such persons with respect to such children.

(6) The Governor, in any case where it appears to him to be for the benefit of a child who has been committed to the care of any person in pursuance of this section, may empower such person to procure the emigration or repatriation of the child, but, except with such authority, no person to whose care a child is so committed shall procure his emigration or repatriation.

Maintenance of child committed to care of any person.

20. (1) Any person to whose care a child is committed under this Ordinance shall, whilst the order is in force, have the like control over the child as if he were his parent, and shall be responsible for his maintenance, and the child shall continue in the care of such person, notwithstanding that he is claimed by his parent or any other person, and if any person-

Escape.
Harbouring.

- a. knowingly assists or induces, directly or indirectly, a child to escape from the person to whose care he is so committed; or
- b. knowingly harbours, conceals, or prevents from returning to such person, a child who has so escaped, or knowingly assists in so doing;

Power to order parent to contribute to maintenance of child.

he shall be guilty of an offence, and shall on summary conviction be liable to a fine not exceeding twenty pounds, or to be imprisoned, with or without hard labour, for any period not exceeding two months.

Payment of contributions.

(2) Any court having power so to commit a child shall have power to make an order on the parent or other person liable to maintain the child to contribute to his maintenance during such period as aforesaid such weekly sum, not exceeding ten shillings, as having regard to the ability of the parent or other person seems reasonable, and such orders shall be enforceable in the same manner as a judgment debt.

Variation of order.

(3) Any such order may be made on the complaint or application of the person to whose care the child is for the time being committed, and either at the time when the order for the committal of the child to his care is made, or subsequently, and the sums contributed by the parent or such other person shall be paid to such person as the court may name, and be applied for the maintenance of the child.

Power of any court before which a person is charged to make order.

(4) Any order made under this section may, on application being made either by the parent or such other person or by the person to whose care the child is for the time being committed, and after fourteen days' notice of such application has been given to the other of such parties, be varied by any court which would have had power to make the order.

(5) An order under this section may be made by any court before which a person is charged with an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, and without regard to the place in which the person to whom the payment is ordered to be made may reside.

Contribution orders.

21. The persons liable to maintain a child against whom an order to contribute to the maintenance of the child may be made under this Ordinance shall include his step-parent, and, cohabiting with his mother, whether or not the person so cohabiting is his putative father, and in the case of illegitimacy his putative father:

Provided that where the child is illegitimate and an affiliation order for his maintenance has previously been made on the application of his mother, the court shall not (unless in view of the special circumstances of the case the court thinks it desirable) make an order for contribution against the putative father.

Power of magistrate to issue warrant to search for or remove a child.

22. (1) If it appears to a magistrate or Justice of the Peace on information on oath laid by any person who, in the opinion of the magistrate or Justice of the Peace, is acting in the interests of a child that there is reasonable cause to suspect-

- a. that a child has been or is being assaulted, ill-treated, or neglected in any place within the jurisdiction in a manner likely to cause the child unnecessary suffering, or to be injurious to his health; or
- b. that an offence under this Ordinance, or any offence mentioned in the schedule to this Ordinance, has been or is being committed in respect of a child, the magistrate or Justice of the Peace may issue a warrant-

Apprehension by same warrant.

- i. authorising any constable named therein to search for such child and, if it is found that he has been or is being assaulted, ill-treated, or neglected in manner aforesaid, or that any such offence as aforesaid has been or is being committed in respect of the child, to take him to and detain him in a place of safety until he can be brought before the court, or
- ii. authorising any constable to remove the child with or without search to a place of safety and detain him there until he can be brought before the court;

Removal of child by force if necessary.

and the court before whom the child is brought may commit him to the care of a relative or other fit person in like manner as if the person in whose care he was had been committed for trial for an offence under this Ordinance.

Mode of executing warrant.

Name. (2) The magistrate or Justice of the Peace issuing a warrant under this section may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before the court and proceedings to be taken against such person according to law.

(3) Any constable authorised by warrant under this section to search for any child or to remove any child with or without search, may enter (if need be by force) any house, building, or other place specified in the warrant, and may remove the child therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by a constable who shall be accompanied by the person laying the information if such person so desire, unless the magistrate by whom the warrant is issued otherwise directs, and may also, if the magistrate or Justice of the Peace by whom the warrant is issued so directs, be accompanied by a duly qualified medical practitioner.

(5) It shall not be necessary in any information or warrant under this section to name the child.

PART IV. - EVIDENCE AND PROCEDURE

Extension of power to take deposition of child.

23. (1) Where a magistrate or Justice of the Peace is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child in respect of whom an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, is alleged to have been committed, would involve serious danger to the life or health of the child, the magistrate or Justice of the Peace may take in writing the deposition of the child on oath, and shall thereupon subscribe the deposition and add thereto a statement of the reason for taking the deposition was taken, and of the names of the persons (if any) present at the taking thereof.

Preservation and transmission of deposition.

(2) The magistrate or Justice of the Peace taking any such deposition shall transmit it with his statement-

- a. if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and
- b. in any other case, to the clerk of the court in which the deposition has been taken;

and the clerk of the court to whom any such deposition is transmitted shall preserve, file and record the deposition.

Admission of deposition in evidence.

24. Where on the trial of any person for an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, if the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to the life or health of the child, any deposition of the child, duly taken, shall be admissible in evidence either for or against the accused person without further proof thereof-

- a. if it purports to be signed by the magistrate or Justice of the Peace by or before whom it purports to be taken; and
- b. if it is proved that reasonable notice of the intention to take the deposition has been served upon the person against whom it is proposed to use it as evidence, and that that person or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

- Evidence of child of tender years. 25. Where, in any proceeding against any person for an offence under this Ordinance, or for any of the offences mentioned in the schedule to this Ordinance, 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 understand the nature of an oath, the evidence of that child may be received, though not given upon oath, if, in the opinion of the court the 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 the child, though not given on oath, but otherwise duly taken and reduced into writing, shall be deemed to be a deposition within the meaning of this Ordinance:
- Corroboration of child of tender years. Provided that-
- Cap. 43. a. a person shall not be liable to be convicted of any 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
- b. any child, whose evidence is received as aforesaid and who wilfully gives false evidence under such circumstances that, if the evidence had been given on oath, he would have been guilty of perjury, shall be liable on summary conviction to be adjudged such punishment as might have been awarded had he been charged with perjury, and the case dealt with summarily under the Perjury Ordinance.
- Absence of child at hearing. 26. Where in any proceedings with relation to an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, the court is satisfied that the attendance before the court of any child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.
- Mode of charging offences in relation to several children. 27. (1) Where a person is charged with committing an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, in respect of two or more children, the same information or summons may charge the offence in respect of all or any of them, but the person charged shall not be liable to a separate penalty for each child except upon separate informations.
- Inclusion of different offences in same information. (2) The same information or summons may also charge any person as having the custody, charge, or care, alternatively or together, and may charge him with the offences of assault, ill-treatment, neglect, abandonment, or exposure, together or separately, and may charge him with committing all or any of these offences in a manner likely to cause unnecessary suffering or injury to health, alternatively or together, but when those offences are charged together the person charged shall not be liable to a separate penalty for each.
- Limitation of time in summary proceedings. (3) A person shall not be summarily convicted of an offence under this Ordinance, or of an offence mentioned in the schedule to this Ordinance, unless the offence was wholly or partly committed within six months before the information was laid, but, subject as aforesaid, evidence may be given of acts constituting or contributing to constitute the offence, and committed at any previous time.
- Continuous offence.

(4) When an offence under this Ordinance, or any offence mentioned in the schedule to this Ordinance charged against any person is a continuous offence, it shall not be necessary to specify in the information or summons the date of the acts constituting the offence.

Power in case of charge under sections 6 or 7 to convict under section 9.

28. Any person charged with an offence under sections 6 or 7 may be found guilty of an offence under section 9 of this Ordinance.

Evidence of wife or husband of accused.

29. The wife or husband of a person charged with an offence under this Ordinance, or any of the offences mentioned in the schedule to this Ordinance, may be called as a witness either for the prosecution or for the defence and without the consent of the person charged.

Definition of carnal knowledge.

30. Whenever upon the trial for any offence punishable under this Ordinance it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

Consent to indecent assault no defence.

31. It shall be no defence to a charge of indecent assault on a child under fourteen years of age to prove that he or she consented to the act of indecency.

Saving of liability to other criminal proceedings.

32. This Ordinance shall not exempt any person from any proceeding for an offence which is punishable at common law or under any other Ordinance or under any act of general application.

SCHEDULE.

Sections 23, 24, 25, 26, 27.

Any offence under section 27 or 56 of the Offences against the Person Act, 1861, and any offence against a child under sections 5, 42, 43 or 62 of that Act.

24 and 25 Vict. c. 100.

Any other offence involving bodily injury to a child.