

Borstal School Act, 1963

Chapter 2 - Committal to Borstal Schools

Where it appears to the competent court that an offender before it, is a young offender and that, by reason of his criminal habits or tendencies or association with persons of bad character, it is expedient that he should be subject to detention for such term under such instruction and discipline as appears most conducive to his reformation, such Court may pass, in lieu of a sentence of imprisonment or of an order of imprisonment under section 123 of the Code, an order for the detention of such offender in a Borstal School established under this Act, or subject to the provisions of section 13, in a Borstal School in any other State in India for such term not being less than three years, nor more than five years as the competent court, subject to rules made under this Act, thinks fit but in no case extending beyond the date on which the offender will, in the opinion of the Court attain the age of twenty-three years:

Provided that before passing such an order, the competent court shall give an opportunity to the parents or the guardians of the said offender to be heard and shall consider any appeal or representation which may be made to it as to the suitability of the case for treatment in such Borstal School and shall be satisfied that the character, state of health and mental condition of the young offender and the other circumstances of the case, are such that such offender is likely to profit by such instruction and discipline, as aforesaid.

Section 6 - Power of State Government to exempt

The State Government may, by rules made under this Act, direct that any class or classes of persons specified in such rules, shall not be ordered to be detained in a Borstal School.

Section 7 - Courts empowered to pass orders for detention

(1) Notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, the following Courts shall have power exclusively to pass orders for detention and such other orders that a competent Court is empowered to pass under this Act against young offenders:

- (a) a Court of the District Magistrate;
- (b) a Court of a Magistrate of the First Class.

(2) The powers conferred on a competent Court by or under this Act shall also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

Section 8 - Procedure when Magistrate is not empowered to pass an order for detention under this Act

(1) When any Magistrate not empowered to pass an order for detention under this Act is of the opinion that an offender before him is a young offender to be detained in a Borstal School, he may, when passing any order, record such opinion and submit his proceedings and forward the offender to the Court of the District Magistrate or to the Court of Session, to which he is subordinate, as the case may be.

(2) The Court of Session to which the proceedings are submitted under sub-section (1) may transfer such proceedings to any competent court to pass an order under this Act.

(3) The Court of the District Magistrate to which the proceedings are submitted under sub-section (1) or the competent court to which the proceedings are transferred under sub-section (2) may make such further inquiry, if any, as it may think fit, and may pass such order for the detention of the offender in a Borstal School, or such other sentence or order as it might have passed if such offender had originally been brought before or tried by it.

Section 9 - Limitation on powers conferred by section 5

Any young offender detained in a Borstal School for failure to furnish security when ordered to do so under section 106 or section 118 of the Code shall be released on furnishing such security or on the passing of an order under section 124 of the Code.

Section 10 - Transfer of person from prison to Borstal School

(1) If the Inspector-General is satisfied that a person imprisoned in consequence of a sentence passed under any law or undergoing imprisonment under an order made under section 123 of the Code, for failure to give security, is a young offender, who, by reason of his criminal habits or tendencies or association with persons of bad character, might with advantage be detained in a Borstal School, the Inspector-General may report the case to the State Government, and if the State Government, after making such inquiry, as it may deem proper or as may be prescribed, is satisfied that the person should, for the reasons mentioned in the report, be detained in a Borstal School, it may, by order in writing, direct such person to be transferred from the prison to a Borstal School established under this Act or subject to the provisions of section 13, to a Borstal School in any other State in India and to be detained in such School, in lieu of the unexpired residue of his sentence or of the period of imprisonment, which he is liable to undergo for failure to furnish security, as the case may be, for such period as together with the period of imprisonment already undergone will not exceed the maximum period for which such person could have been ordered to be detained by a competent Court under section 5:

Provided that such person shall not be directed to be detained in a Borstal School for a period which, including the period of imprisonment undergone, exceeds the period of imprisonment to which such person has been sentenced or the period of imprisonment which he is liable to undergo for failure to furnish security, as the case may be.

(2) A person transferred to a Borstal School under sub-section (1) shall upon transfer to such School, be deemed to be an offender ordered to be detained by a competent Court under the provisions of section 5 and the provisions of this Act shall apply to such person accordingly.

Section 11 - Transfer of incorrigibles, etc., to prisons

(1) Where an offender detained in a Borstal School escapes or is reported to the State Government by the Inspector-General to be incorrigible or to exercise or to be likely to exercise a bad influence on the other inmates of the School or to be more than twenty-one years of age, or where a licence granted under section 15, is revoked by the State Government under clause (ii) of the proviso to sub-section (1) of section 16 or is, in the opinion of the State Government, otherwise unsuitable for training in a Borstal School, the State Government may commute the unexpired residue of the term of detention to such term of imprisonment of either description as it may determine, but in no case exceeding the shortest of the following three periods, namely:"

(a) the unexpired residue of the term of detention; or

(b) the maximum period of imprisonment provided by law for the offence of which the offender was found guilty or for the failure to give security, as the case may be, in consequence of which the offender was ordered to be detained in a Borstal School or ordered to be transferred to and detained in such School by the State Government; or

(c) the maximum period of imprisonment, which the Court that tried him had authority to award under the Code.

(2) Such offender may be confined in any prison in the [1](#)[State of Karnataka] by warrant under the hand of a Secretary to Government, and effect shall be given to such warrant and the sentence of imprisonment passed upon such offender shall be executed in the same manner as if such person had been sentenced by a competent Court of criminal jurisdiction.

1. Adapted by the Karnataka Adaptations of Laws Order. 1973 w.e.f. 01.11.1973.

Section 12 - State Government to determine the Borstal School in which a person shall be detained and may order removal

(1) Every young offender ordered to be detained in a Borstal School shall be detained in such Borstal School as the State Government may, by general or special order, appoint for the reception of persons so ordered to be detained:

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

(2) The State Government may order the removal of any young offender from any one Borstal School to another Borstal School established under this Act, or to a Borstal School in any other State in India, provided that the whole period of his detention in a Borstal School shall not be increased by such removal.

Section 13 - Power to order detention in or removal of offenders to a Borstal School in another State

(1) No order for the detention in or transfer or the removal to a Borstal School in any other State shall be passed except with the previous concurrence of the officer in charge of such Borstal School and unless the Government of the said State under any law in force therein or by general or special orders has consented or is empowered to receive such offender for detention in such Borstal School.

(2) The officer in charge of a Borstal School established under this Act may, subject to the rules made in this behalf, give effect to any order for detention therein of any person passed by any authority under any enactment in force in any other State in India. A person detained in such Borstal School under this provision shall be deemed to be an offender ordered to be detained under the provisions of section 5 and the provisions of this Act shall apply to such person accordingly.

Section 14 - Removal of persons detained to civil hospital in the State for medical treatment

(1) If an offender detained in a Borstal School is suffering from any illness and the Inspector-General is satisfied that it is not possible to render to him proper medical care or treatment in the School, the Inspector-General may provide for the removal of such offender to any civil hospital in the State for the purpose of undergoing medical treatment and for his return to the School after such treatment is undergone.

(2) The period during which an offender is absent from a Borstal School under sub-section (1) shall, for the purposes of computing his term of detention in the School, be deemed to be part of that detention.