

of Pennsylvania exclusive of pew rents and other free contributions belonging to the aforesaid congregation, which said money shall be received by the said trustees and disposed of by them for the purposes and in the manner hereinbefore described and directed.

Passed September 11, 1786. Recorded L. B. No. 3, p. 140, etc.

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## CHAPTER MCCXLI.

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### AN ACT AMENDING THE PENAL LAWS OF THIS STATE.

(Section I. P. L.) Whereas by the thirty-eighth section of the second chapter of the constitution of this commonwealth it is declared, "That the penal laws as heretofore used should be reformed by the legislature of this state as soon as may be and punishments made in some cases less sanguinary and in general more proportionate to the crimes." And by the thirty-ninth section that, "To deter more effectually from the commission of crimes by continued visible punishment of long duration, and to make sanguinary punishment less necessary, houses ought to be provided for punishing by hard labor those who shall be convicted of crimes not capital, wherein the criminal shall be employed for the benefit of the public or for reparation of injuries done to private persons."

And whereas it is the wish of every good government to reclaim rather than to destroy, and it being apprehended that the cause of human corruptions proceed more from the impunity of crimes than from the moderation of punishments, and it having been found by experience that the punishments directed by the laws now in force as well for capital as other inferior offences do not answer the principal ends of society in inflicting them, to wit, to correct and reform the offenders, and to produce such strong impression upon the minds of others as to deter them from committing the like offences, which is conceived may be better effected by continued hard labor, publicly and disgracefully imposed on persons convicted of them, not

only the manner pointed out by the convention, but in streets of cities and towns, and upon the highways of the open country and other public works.

[Section I.] (Section II. P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met and by the authority of the same, That the pains and penalties hereinafter mentioned shall be inflicted upon the several offenders who shall from and after the first day of November next commit and be legally convicted of any of the offences hereinafter enumerated and specified in lieu of the pains and penalties which by law have been heretofore inflicted, that is to say, every person convicted of robbery, burglary, sodomy orbuggery, or as accessory thereof before the fact, shall forfeit to the commonwealth all and singular the lands and tenements, goods and chattels whereof he or she was seized or possessed at the time the crime was committed, and at any time afterwards until convicted and be sentenced to undergo a servitude for any term or time at the discretion of the court who passes the sentence not exceeding ten years in the public gaol or house of correction of the county or city in which the offence shall have been committed and kept at such labor and fed and clothed in such manner as is hereinafter directed.

[Section II.] (Section III. P. L.) Provided always and be it further enacted by the authority aforesaid, That no person accused of any of the aforesaid crimes shall be admitted to bail but by the judges of the supreme court or some or one of them, nor shall he or she be tried but in the supreme court or in a court of oyer and terminer and general goal delivery held in and for the county wherein the offence shall have been committed, and that peremptory challenges shall be allowed in all such cases, wherein they have been heretofore allowed by law: But no attainder hereafter shall work corruption of blood in any case, nor extend to the disinherison or prejudice of any person or persons other than the offender.

[Section III.] (Section IV. P. L.) And be it further enacted by the authority aforesaid, That every person convicted of horse stealing or as accessory thereof before the fact, shall restore

the horse, mare or gelding stolen to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and also pay the like value to the commonwealth, and moreover undergo a servitude for any term not exceeding seven years in the discretion of the court before which the conviction shall be and shall be confined, kept to hard labor, fed and clothed in the manner as is hereinafter directed; every person convicted of simple larceny to the value of twenty shillings and upwards or as accessory thereof before the fact, shall restore the goods or chattels so stolen to the right owner or owners thereof or shall pay to him, her or them the full value thereof or so much thereof as shall not be restored, and moreover shall forfeit and pay to the commonwealth the like value of the goods and chattels stolen, and also undergo a servitude for any term of years not exceeding three, at the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labor, fed and clothed in manner hereinafter directed.

(Section V. P. L.) And whereas by the ninth section of the first chapter of the constitution it is declared, "That in all prosecutions for criminal offences a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favor, and a speedy public trial by an impartial jury of the country without the unanimous consent of which jury he cannot be found guilty." Since which declaration it is not proper that persons accused of small or petty larcencies should be tried and convicted before two magistrates or justices of the peace without the intervention of a jury.

[Section IV.] (Section VI. P. L.) Be it therefore enacted by the authority aforesaid, That the act of assembly, entitled "An act for the trial and punishment of larceny under five shillings<sup>1</sup> be and the same is hereby repealed, and that if any person or persons shall hereafter feloniously steal, take and carry away any goods, or chattels under the value of twenty shillings, the same order and course of trial shall be had and observed as for other simple larcenies, and he, she or they, being thereof le-

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<sup>1</sup> Passed Feb. 24, 1720-21. Chapter 243.

gally convicted, shall be deemed guilty of petty larceny, and shall restore the goods and chattels so stolen or pay the full value thereof to the owner or owners thereof, and also forfeit and pay the like value to the commonwealth and be further sentenced to undergo a servitude for a term not exceeding one year in the discretion of the court before which such conviction shall be, and be confined, kept to hard labor, clothed and fed in manner hereinafter directed. And every person convicted of bigamy or of being an accessory after the fact in any felony, or of receiving stolen goods knowing them to have been stolen, or of any other offense not capital for which by the laws now in force burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping or imprisonment for life, is or may be inflicted, shall instead of such parts of the punishment, be fined, and sentenced to undergo in like manner, and be confined, kept to hard labor, fed and clothed, as is hereinafter directed for any term not exceeding two years, which the court before whom such conviction shall be, may and shall in their discretion think adapted to the nature and heinousness of the offense.

[Section V.] (Section VII. P. L.) And be it further enacted by the authority aforesaid, That robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates on loan on the credit of this commonwealth or of all or any of the United States of America shall be punished in the same manner as robbery or larceny of any goods or chattels.

(Section VIII. P. L.) And whereas by the eight section of the act of assembly, entitled "An act for the advancement of justice and more certain administration thereof,"<sup>2</sup> it is enacted, that if any woman shall endeavor privately to conceal the death of her child, which by being born alive, should by the law be deemed a bastard, so that it may not come to light, whether it were born alive or not, and be convicted thereof, she shall suffer death as in case of murder, "except such mother can make proof by one witness at the least, that the child, whose death was by

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<sup>2</sup> Passed May 31, 1718. Chap. 236.

her so intended to be so concealed, was born dead;" whereby the bare concealment of the death is made almost conclusive evidence of the child's being murdered by the mother or by her procurement.

[Section VI.] (Section IX. P. L.) Be it therefore declared and enacted by the authority aforesaid, That from and after the publication of this act the constrained presumption that the child whose death is so concealed was therefore murdered by the mother, shall not be sufficient evidence to convict the party indicted without probable presumptive proof is given that the child was born alive.

[Section VII.] (Section X. P. L.) And be it further enacted by the authority aforesaid, That every other felony or misdemeanor or offence whatsoever not specially provided for by this act may and shall be punished as heretofore.

[Section VIII.] (Section XI. P. L.) And be it further enacted by the authority aforesaid, That the malefactors sentenced to hard labor as aforesaid in punishment of their crimes may and shall be employed not only in the gaols and houses of correction of the respective counties wherein they shall be confined, but also in repairing and cleaning the streets of the cities or towns, in making, repairing and amending the public roads or highways, in fortifications, mines, and such other hard and laborious works within the county where they shall have been convicted, and for the benefit of such county as by the courts before whom they were convicted in their discretion shall be directed: And during the term of their condemnation shall at the public expense of such county be fed on such course wholesome food as may be sufficient for them and shall have such lodgings as defend them from the inclemencies of the weather (and the males have their heads and beards close shaven at least once in every week) and be clothed in habits of course materials, uniform in color and make and distinguished from all others used by the good citizens of this commonwealth and also have some visible mark on the outer garment designating the nature of the crime for which sentenced, that so they may be marked out to public note as well while at their ordinary occupations as when attempting to make their escapes.

(Section XII. P. L.) And to the end that the opulence of the offender or of his friends or the indiscreet bounties of individuals may not disarm the public justice or alleviate those sufferings which making part of the punishments intended by the law should be incurred equally by all, and also to render escapes more difficult, their keeper shall take particular care that no such malefactor use or receive any clothing other than what shall be provided by the public as is before directed, nor receive, nor have in their own keeping any weapon, [arms], money or other property, nor have attendants of their own, and all articles so prohibited to them and found in their custody or use shall belong to him or her who shall give information thereof to the said keeper and demand delivery to be made by him, which the said keeper is hereby directed to deliver accordingly under the penalty of ten pounds. And the sheriff of the proper county to whom the said malefactors shall be committed in execution of their sentence shall from time to time with the approbation of the justices of the court of quarter sessions of the proper county in open court appoint so many keepers of the said malefactors as shall be necessary whose wages shall be ascertained and allowed by the said court and paid by the treasurer of the county out of the moneys in his hands raised for the use of the said county by a warrant drawn by the said sheriff and at least one of the commissioners of the proper county, and that the duty of the said keepers shall be to superintend and direct their labors, manage and attend to their clothing, diet and lodging, and take care that they be safely kept, and the better to effect this purpose they shall have authority to confine in close durance apart from all society all those who shall refuse to labor, be idle or guilty of any trespass, and during such confinement to withhold from them all sustenance except bread and water, and also to put iron yokes around their necks, chains upon their leg or legs or otherwise restrain in irons such as shall be incorrigible or irreclaimable without such severity.

[Section IX.] (Section XIII. P. L.) And be it further enacted by the authority aforesaid, That the court of quarter sessions of the county wherein the malefactors labor shall have

power either ex-officio or upon information against any such keeper for partiality or cruelty to call before them such keeper, together with the material witnesses and inquire into his conduct, and if it shall appear that he has been guilty of gross partiality or cruelty, it shall and may be lawful for the said court to suspend or remove him, and the judges of the supreme court when sitting in banc or any of the judges when upon the circuit either on their own motion or on complaint made by any other may take original cognizance of the misbehaviours of any keeper and remove him from office if they see cause and in case of suspension or removal of all or any of the said keepers either by the justices of the quarter sessions or the judges of the supreme court, the sheriff of the proper county with the approbation of the justices of the quarter sessions of the same county shall and he is hereby authorized and directed to appoint other keeper or keepers in the room of such as shall have been so suspended or removed.

[Section X.] (Section XIV. P. L.) And be it further enacted by the authority aforesaid, That every of the said keepers shall be exempted from being in the militia and from all fines and duties on that account. And if any malefactor shall escape from his or her keeper or absent himself or herself from his or her labor without good cause, to be judged of by the court whereby he or she was condemned, the term of his or her servitude shall by the order of such court made on record be lengthened two days for every one he or she shall be absent.

(Section XV. P. L.) And whereas many young persons from habits of idleness and intemperance and from want of a pious education are drawn unwarily into the commission of crimes and are apprehended and brought to punishment before they become so hardened as to be void of shame or beyond the hope of being reclaimed.

[Section XI.] Be it further enacted by the authority aforesaid, That the keepers aforesaid shall endeavor as much as in them lies to separate as well those who are confined to labor within doors, as those that shall be employed without in such manner as that the old and hardened offenders be prevented from mixing with and thereby contaminating and eradicating

the remaining seeds of virtue and goodness in the young and unwary, and the men from an improper intercourse with the women.

[Section XII.] (Section XVI. P. L.) And be it further enacted by the authority aforesaid, That the sheriffs or keepers of the gaols and the keepers of the work-houses or houses of correction in the several counties of this state shall once in every three months or oftener if required, furnish the commissioners of their respective counties with a complete calender or list of all persons committed to their respective custody under sentence of such servitude, together with the names of their crimes, the term of their servitude, in what court condemned, the ages and description of the persons of such as shall appear to be too old and infirm or otherwise incapable to undergo hard labor out of the gaols or work-houses, and the said commissioners shall at the charge of the proper county provide for the clothing and the food hereinbefore directed for them, and also such articles and materials of labor and manufacture as shall be most suitable for the employment of all those who are capable of labor or manufacture, and deliver the same to the said gaoler, sheriff or other work-house keeper, taking a receipt therefor, and that the sheriff, gaoler and work-house keeper shall render an account quarterly or oftener if required to the commissioners of the work done by the said malefactors and dispose of the same in such manner as the commissioners shall direct. And the said commissioners are hereby authorized from time to time to draw orders or give their warrants on the treasurer of the proper county for the advance of such sums as they shall thing reasonable and necessary for carrying this act into execution, and all expenses and charges incurred or to be incurred by virtue of this act shall be levied and raised as other county charges are, and be accounted for in like manner.

(Section XVII. P. L.) And in order to encourage those offenders in whom the love of virtue and the shame of vice is not wholly extinguished to set about a sincere and actual repentance and reformation of life and conduct so as at the expiration of their terms of servitude they may become useful members of society.

[Section XIII.] Be it further enacted by the authority aforesaid, That upon the application of any of the said malefactors or any other in their behalf it shall and may be lawful for the court in which they were convicted at and before the expiration of their servitude to make inquiry as well of the sheriff, gaoler or keeper of the work-house or house of correction as of the keeper and keepers and others concerning the conduct and behaviour of such applicant during his or her servitude, and, if it shall appear thereupon to them that such person hath labored faithfully without attempting an escape and evidenced by a patient submission to the justice of their punishment a sincere reformation, then and in such case the said court shall grant to every such person a certificate thereof which shall also be recorded without fee in the proceedings of such court, and shall thereupon operate as a discharge from all claims and demands of the party injured and also as a pardon of the guilt and infamy of the offence, and give him or her a new capacity and credit.

[Section XIV.] (Section XVIII.) And be it further enacted by the authority aforesaid, That the profits arising from the work, labor and services of malefactors in pursuance of this act shall be applied towards the payment of the fees of their prosecutions and the expenses which shall accrue in making the necessary provision for clothing, maintaining and keeping them, and if there should be any surplus, the same shall be paid into the treasury for the use of the proper county.

[Section XV.] (Section XIX. P. L.) And be it further enacted by the authority aforesaid, That this act shall be in force and take effect within this commonwealth from and after the first of November next.

[Section XVI.] (Section XX. P. L.) Provided nevertheless and be it further provided by the authority aforesaid, That if any person shall be convicted in any county within this state of any offence which had been committed before the publication of this act and for which he or she by the laws now in force would be liable to suffer the pains of death that if such convict openly pray the court before which such conviction shall be had, that sentence be passed upon him or her according to the provisions of this act for like offence, that then and in such

case the court shall pass like sentence against such convict and to similar effect and not otherwise as if the offence of which such person shall be so convicted had been committed after the first of November next.

[Section XVII.] (Section XXI. P. L.) Be it further enacted by the authority aforesaid, That this act shall be in force and have effect as to the therein offences mentioned and provided for, which shall have been committed within three years from and after the first day of November next, and to the end of the next succeeding session of the general assembly and no longer.

(Section XXII. P. L.) Provided nevertheless, That the force and operation thereof as to the person or persons who shall so offend within the same terms shall not be vacated nor affected thereby, but the same sentences and every of them shall be pronounced, remain valid and be executed in their full extent on all and every such person and persons notwithstanding the expiration of the term last aforesaid.

(Section XXIII. P. L.) And whereas it may so happen that there may be but one or few offenders convicted and sentenced to hard labor and other punishment in pursuance of this act within any county, whereby the burden upon the same county may be needlessly great and it would further the good designs of the legislature in making the foregoing alterations in the penal laws of this commonwealth, and lessen the charges of carrying the provisions of this act into execution, if in proper cases the said offender or offenders may be removed to some other county or counties there to be imprisoned and treated according to their several sentences:

Therefore:

[Section XVIII.] Be it enacted by the authority aforesaid, That the president or vice president in council upon application for that purpose made by the commissioners of any county within this commonwealth at their discretion may if they think proper authorize and direct by warrant under the less seal the removal of any convict or convicts by virtue of this act from any one or more of the counties of this commonwealth to any other of the counties of the same, there to be held, imprisoned, kept at labor, fed and treated in the same manner as if they had

severally remained in the county where they or either of them was or were convicted; and the commissioners of the county to which any such convict or convicts shall be so removed as aforesaid shall have authority to draw an order or orders from time to time or as often as it shall be necessary upon the treasurer of the county from whence any convict or convicts shall have been so removed for all expenses which shall or may accrue in removing, feeding and clothing such convict or convicts, which order or orders the treasurer of the proper county from which such convict or convicts was removed shall accept and pay.

Passed September 15, 1786. Recorded L. B. No. 3, p. 112, etc.  
See the Acts of Assembly passed March 27, 1789, Chapter 1409;  
April 5, 1790, Chapter 1516.

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## CHAPTER MCCXLII.

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AN ACT FOR ALTERING AND AMENDING AN ACT ENTITLED "AN ACT TO REGULATE THE GENERAL ELECTIONS OF THIS COMMONWEALTH AND TO PREVENT FRAUDS THEREIN."<sup>1</sup>

(Section I. P. L.) Whereas it was enacted and provided in and by an act of general assembly of this commonwealth published on the thirteenth day of September last, entitled "An act to regulate the general elections of this commonwealth and to prevent frauds therein," with design to prevent the committing of irregularities and abuses during the night time, that the general elections of this commonwealth shall begin on the second Tuesday in the month of October annually between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the same day and the poll whereof shall be carried on without interruption or adjournment until the hour of seven o'clock in the afternoon of the same day, other than the elections to be holden for the city and county of Philadelphia, the poll whereof shall be carried on without interruption or adjourn-

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<sup>1</sup> Passed Sept. 13, 1785. Chap. 1175.