

## PROBATION OF OFFENDERS ACT

Act 58 of 1946 – 1 June 1947

### ARRANGEMENT OF SECTIONS

#### SECTION

- |  |                                       |
|--|---------------------------------------|
| 1. Short title                             | 10. Production of documents           |
| 2. Interpretation                          | 11. Amendment of probation order      |
| 3. Court may make probation order          | 12. Discharge of probation order      |
| 3A. Report by probation officer            | 13. Production of copies of orders    |
| 4. Probation order                         | 14. Selection of probation officer    |
| 5. Court may order offender to pay damages | 15. Contributions                     |
| 6. Probationer committing offence          | 16. Appointments                      |
| 7. Non-compliance with probation order     | 17. Regulations                       |
| 8. Disqualification or disability          | 18. – 19. –                           |
| 9. Right of appeal                         | 20. Exemption from police supervision |

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## PROBATION OF OFFENDERS ACT

### 1. Short title

This Act may be cited as the Probation of Offenders Act.

### 2. Interpretation

In this Act-

"Principal Probation Officer" means a person appointed as such under section 16 (1) (a);

"Probation Committee" means a committee appointed to be a Probation Committee under section 16 (2);

"probation officer" means a person appointed as such under section 16 (1) (b);

"probation order" means an order made under section (3) placing a person under the supervision of a probation officer;

"probationer" means a person placed under supervision by a probation order.

### 3. Court may make probation order

(1) (a) Subject to paragraph (b), where a Court by or before which a person is convicted of an offence, not being an offence the sentence for which is fixed by law, is of opinion that having regard to the circumstances, including the nature of the

offence and the character, antecedents, age, health, mental condition and home surroundings of the offender, it is expedient to do so, the Court may, instead of sentencing him, make a probation order.

(b) Before making a probation order, the Court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply with the order or commits another offence, he shall be liable to be sentenced for the original offence.

(c) The Court shall not make a probation order unless the offender expresses his willingness to comply with the order.

(2) In this section, "offence the sentence for which is fixed by law" means an offence-

- (a) for which the Court is required to sentence the offender to penal servitude for life or to detention during the President's pleasure; or
- (b) for the prosecution of which section 205 of the Criminal Procedure Act provides the Part X of that Act shall not apply.

[S. 3 amended by Act 48 of 1991.]

### **3A. Report by probation officer**

(1) Subject to subsection (2), where a report by a probation officer is made to a Court with a view to assisting the Court in determining the most suitable method of dealing with a person in respect of an offence, a copy of the report shall be given by the Court to the offender or his Counsel or attorney.

(2) Where the offender is under the age of 17 and is not represented by Counsel or an attorney, the copy of the report shall be given to his parent or guardian if present in Court.

### **4. Probation order**

(1) (a) A probation order shall-

- (i) have effect for such period being not less than one year nor more than 3 years from the date of the order as may be specified in the order; and
- (ii) require the probationer to submit during that period to the supervision of a probation officer appointed for or assigned to the district in which the probationer will reside after the making of the order.

(b) The order shall contain-

- (i) such provisions as the Court considers necessary for securing the supervision of the offender; and
- (ii) such additional conditions as to residence and other matters as the Court, having regard to the circumstances of the case, considers

necessary for security the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(2) (a) Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order.

(b) Where a provision under paragraph (a) requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond 12 months from the date of the order, and the Court shall forthwith give notice of the terms of the order to the Minister.

(3) The Court by which a probation order is made shall furnish 2 copies of the order, one to the probationer and the other to the probation officer under whose supervision he is placed.

## **5. Court may order offender to pay damages**

(1) Where a person is placed under the supervision of a probation officer, the Court may, without prejudice to its power of awarding costs against the offender, order the offender to pay such damages for injury or compensation for loss as the Court thinks reasonable, but not exceeding in the aggregate 2,000 rupees or such greater sum as may be allowed by any enactment relating to the offence.

(2) (a) Where a Court makes an order for the payment of damages or compensation under subsection (1), the order may be enforced in the same manner as an order for the payment of costs by the offender.

(b) Where the Court, in addition to making an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs.

[S. 5 amended by Act 15 of 1998.]

## **6. Probationer committing offence**

(1) (a) Subject to paragraph (b), where it appears to a Judge or a Magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified in the order or may issue a warrant for his arrest.

(b) No summons or warrant shall be issued under paragraph (a) by—

(i) a Judge, except on an information filed by the Director of Public Prosecutions;

(ii) by a Magistrate, except on information in writing and on oath.

(2) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the Court by which the probation order was made.

(3) Where a probationer is convicted by a Magistrate of an offence committed while the probation order was in force, the Magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the Court by which the probation order was made.

(4) Where it is proved to the satisfaction of the Court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, the Court may deal with the probationer for the offence in respect of which the probation order was made in any manner in which it could deal with him if it had just convicted him of that offence.

(5) Where a probationer in respect of whom a probation order has been made by a Court, other than the Supreme Court, is convicted before the Supreme Court of an offence committed while the probation order was in force, the Supreme Court may deal with the probationer for the offence in respect of which the probation order was made in any manner in which the Court by which the probation order was made could have dealt with him if it had just convicted him of that offence.

## **7. Non-compliance with probation order**

(1) (a) Subject to paragraph (b), where it appears to a Judge or Magistrate that a probationer has failed to comply with any provision of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified in the order or may issue a warrant for his arrest.

(b) No summons or warrant under paragraph (a) shall be issued by-

- (i) a Judge, except on an information filed by the Director of Public Prosecutions;
- (ii) a Magistrate, except on an information in writing and on oath.

(2) A summons or warrant under this section shall direct the probationer to appear or to be brought before the Court by which the probation order was made.

(3) (a) Subject to paragraph (b), where it is proved to the satisfaction of the Court by which the probation order was made that a probationer has failed to comply with any provision of the probation order, the Court may-

- (i) without prejudice to the continuance in force of the probation order, impose on the probationer a fine not exceeding 100 rupees; or
- (ii) deal with the probationer for the offence in respect of which the probation order was made in any manner in which it could have dealt with him if it had just convicted him of that offence.

(b) Where a Court has, under paragraph (a) (i), imposed a fine on a probationer, on any subsequent sentence being passed upon the probationer under

section 6 or this section, the imposition of the fine shall be taken into account in fixing the sentence.

## **8. Disqualification or disability**

(1) Subject to subsection (2), where a person is convicted of an offence and is released under a probation order, his conviction for that offence shall be disregarded for the purposes of any enactment by or under which-

- (a) a disqualification or disability is imposed upon convicted persons; or
- (b) provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after previous conviction.

(2) Where a probationer is subsequently sentenced for the original offence, subsection (1) shall cease to apply to that offence, and the probationer shall be deemed, for the purposes of any enactment imposing a disqualification or disability, to have been convicted on the date of sentence.

## **9. Right of appeal**

(1) In every case where a person in respect of whom a probation order has been made by a Court, other than the Supreme Court, did not plead guilty or admit the truth of the information, that person shall have a right of appeal against the order to the Supreme Court and the District and Intermediate Courts (Criminal Jurisdiction) Act shall, with such adaptations and modifications as the context may require, apply to those appeals.

(2) On the hearing of an appeal or of a case stated, the Supreme Court shall have, in addition to the powers exercisable in virtue of the District and Intermediate Courts (Criminal Jurisdiction) Act, the power of amending any condition contained in the probation order.

(3) On the hearing of an appeal or a case stated, the Supreme Court may exercise the powers as to the probation of the offender which are by this Act vested in the Court hearing the original charge.

## **10. Production of documents**

(1) Where a probationer is committed to custody or released on bail by a Magistrate until he can be brought or appear before the Court which made the probation order, the Magistrate shall transmit to the Court such particulars of the case as he thinks desirable.

(2) Where a probationer has been convicted of a subsequent offence by a Magistrate, the Magistrate shall transmit to the Court a certificate to that effect, signed by him.

(3) For the purpose of proceedings in the Court to which it is transmitted, the certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

## **11. Amendment of probation order**

(1) (a) Subject to this section where, on the application of a probationer or of the probation officer responsible for his supervision, the Court which made the probation order is satisfied that the probation order should be amended, the Court may, by order, amend the probation order accordingly.

(b) No order shall be made under this section reducing the period of duration of the probation order to less than one year, or extending that period beyond 3 years from the date of the probation order.

(2) An order under subsection (1) may require a probationer to reside in an institution for any period not extending beyond 12 months from the date of that order where the total period or the aggregate of the periods for which he is required to reside in an institution under the probation order does not exceed 12 months.

(3) (a) Where the Court is satisfied, on the application of the probation officer responsible for the supervision of the probationer, that the probationer has changed, or is about to change, his residence from the district named in the order to another district, it-

(i) may vary the probation order by substituting for the reference to the district named in it a reference to the district where the probationer is residing or is about to reside; and

(ii) shall transmit to the Court for the new district all documents and information relating to the case.

(b) The Court for the new district mentioned in paragraph (a) (ii) shall be deemed for the purposes of this Act to be the Court by which the probation order was made.

(4) (a) An order under this section cancelling a provision of a probation order or substituting a new district for the district named in the order may be made without summoning the probationer.

(b) No other order under this section shall be made except on the application or in the presence of the probationer.

(5) Where an order is made under this section for the amendment of a probation order requiring a probationer to reside in an institution, the Court shall forthwith give notice of the terms of the order to the Minister.

## **12. Discharge of probation order**

(1) (a) The Court by which a probation order was made may, on the application of the probationer or of the probation officer responsible for his supervision, discharge the probation order.

(b) Where the application is made by the probation officer, the Court may deal with it without summoning the probationer.

(2) Where an offender in respect of whom a probation order has been made is subsequently sentenced for the offence in respect of which the order was made, the order shall cease to have effect.

### **13. Production of copies of orders**

Where an order is made amending or discharging a probation order, the clerk of the Court by which that order is made shall-

- (a) in the case of an amending order, furnish 2 copies of it to the probation officer responsible for the supervision of the probationer; and
- (b) in the case of an order for the discharge of a probation order, furnish one copy to the probation officer who was responsible for the supervision of the probationer and one copy to the probationer.

### **14. Selection of probation officer**

(1) (a) The probation officer who is to be responsible for the supervision of a probationer shall be selected by the Court which makes the probation order.

(b) Where the probation officer selected under paragraph (a) dies or is unable for any reason to carry out his duties, or where the probation committee dealing with the case considers it desirable that another officer shall take his place, another probation officer shall be selected by the Court.

(2) Where a female is placed under the supervision of a probation officer, the probation officer shall be a woman.

### **15. Contributions**

Contributions may be made from the Consolidated Funds towards the establishment and maintenance of homes for the reception of persons placed under the supervision of probation officers as the President may approve.

[S. 15 amended by Act 48 of 1991.]

### **16. Appointments**

(1) The Public Service Commission shall appoint-

- (a) a Principal Probation Officer who shall organise and supervise the probation service in Mauritius in accordance with regulations made under this Act;
- (b) a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as may be prescribed.

(2) (a) The President shall appoint a Probation Committee consisting of such persons as he thinks fit.

(b) The Probation Committee under paragraph (a) shall review the work of probation officers in individual cases and perform such duties in connection with probation as may be prescribed.

[S. 16 amended by Act 48 of 1991.]

## **17. Regulations**

The Minister may make regulations in respect of-

- (a) the duties of a Principal Probation Officer;
- (b) the duties of probation officers;
- (c) the constitution and duties of a Probation Committee;
- (d) the form or records to be kept under this Act;
- (e) the remuneration of any person appointed to carry out any duties under this Act and the fees and charges to be made for any act, matter or thing under this Act to be done or observed; and
- (f) generally for the purposes of this Act.

**18. – 19. -**

## **20. Exemption from police supervision**

(1) No direction shall be given by a Court that an offender in respect of whom a probation order made under this Act is in operation shall be subject to the supervision of the Police.

(2) Any direction given before the making of a probation order shall, as from the date of the probation order, lapse.