

**PROBATION OF OFFENDERS ACT**

Act 58 of 1946 – 1 June 1947

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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—

“attendance centre” means a centre designated as such by the Commissioner;

“attendance centre requirement” means a requirement for a probationer to attend a centre;

“Commissioner” means the Commissioner of the Mauritius Probation and Aftercare Service;

“curfew requirement” means a requirement for a probationer to remain indoors on specified days and hours at a place designated under section 4 (3) (b);

“drug or alcohol treatment requirement” means a requirement for a probationer to follow a treatment;

“guardian”, in relation to a minor, includes a person who has for the time being the charge of, or control over, the minor;

“institution”, in relation to a minor, means—

- (a) the Probation Hostel for Boys;

- (b) the Probation Home for Girls; or
- (c) any other institution run by the Mauritius Probation and After-care Service;

“Minister” means the Minister to whom responsibility for the subject of probation and aftercare service is assigned;

“minor” means a person who is under the age of 18;

“probationer” means a person placed under supervision by a probation order;

“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);

“probation order” means an order made under section (3) placing a person under the supervision of a probation officer and in the form set out in the Schedule;

“residence requirement” means a requirement for a probationer to reside in an institution.

[S. 2 amended by s. 3 of Act 11 of 2009 w.e.f. 1 October 2010.]

### **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, after duly considering any report made under section 3A and 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 that Part X of that Act shall not apply.

[S. 3 amended by Act 48 of 1991; by s. 4 of Act 11 of 2009 w.e.f. 1 October 2010.]

### 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 a minor 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.

[S. 3A amended by s. 5 of Act 11 of 2009 w.e.f. 1 October 2010.]

### 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 conditions and requirements as the Court considers necessary for securing the supervision of the offender; and
- (ii) such other conditions and requirements as the Court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(c) (i) Subject to subparagraph (ii), in making a probation order, a Court may impose one or more of the following requirements—

- (A) an attendance centre requirement;
- (B) a curfew requirement;
- (C) a drug or alcohol treatment requirement;
- (D) a residence requirement.

(ii) A curfew and a residence requirement shall be imposed in respect of a minor only.

(2) (a) Where a probation order contains an attendance centre requirement, the centre where, and the period during which, a probationer is required to attend shall be specified in the probation order.

(b) Where a requirement under paragraph (a) requires a probationer to attend a centre—

- (i) the period during which the probationer is required to attend shall not exceed 60 hours; and
- (ii) the probationer shall not be required to attend more than 3 hours a day.

(3) (a) Subject to paragraphs (b) and (c), where a probation order contains a curfew requirement, the place where, and the days on and the hours between which, a probationer is required to remain indoors shall be specified in the probation order.

(b) The place where a probationer is required to remain indoors shall be designated by the Commissioner and shall not include an institution.

(c) The days on and the hours between which a probationer is required to remain indoors shall not span over a period of more than 6 months as from the date of probation order.

(d) A curfew requirement shall, as far as practicable, not interfere with the normal working hours, school hours or educational activity, as the case may be, of a probationer.

(e) A Court shall, before imposing a curfew requirement, obtain and consider information about the place proposed to be specified in the probation order, including information from any person likely to be affected by the presence of the offender.

(4) (a) Where a Court—

- (i) convicts a person under section 34 (1) of the Dangerous Drugs Act; or
- (ii) is satisfied that an offender is dependent on drug or alcohol, the Court may impose on him a drug or alcohol treatment requirement.

(b) A Court shall not make a drug or alcohol treatment requirement unless it is satisfied that necessary arrangements have been made for such treatment to be followed.

(5) (a) Where a probation order contains a residence requirement, the institution where, and the period during which, a probationer is required to reside shall be specified in the probation order.

(b) Subject to paragraph (c), where a requirement under paragraph (a) requires a probationer to reside in an institution, the period during which the probationer is required to reside shall not span over a period or more than 12 months as from the date of a probation order.

(c) A Court may, in exceptional circumstances, extend the period of 12 months specified in paragraph (b).

(6) A Court making a probation order shall give one copy of the order to the offender and one to the probation officer under whose supervision he is placed.

[S. 4 amended by s. 6 of Act 11 of 2009 w.e.f. 1 October 2010.]

## 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, resulting from the commission of the offence as the Court thinks reasonable, but not exceeding in the aggregate 50,000 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; by s. 7 of Act 11 of 2009 w.e.f. 1 October 2010.]

## 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 condition or requirement 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 condition or requirement 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 10,000 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.

[S. 7 amended by s. 8 of Act 11 of 2009 w.e.f. 1 October 2010.]

#### **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 or requirement 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.

[S. 9 amended by s. 9 of Act 11 of 2009 w.e.f. 1 October 2010.]

## **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) —

(4) (a) An order under this section cancelling a condition or requirement of a probation 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.

[S. 11 amended by s. 10 of Act 11 of 2009 w.e.f. 1 October 2010.]

## **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.** —

[S. 14 repealed by s. 11 of Act 11 of 2009 w.e.f. 1 October 2010.]

## **15. Contributions**

Contributions may be made from the Consolidated Fund towards the establishment and maintenance of institutions for the reception of persons placed under the supervision of probation officers as the Minister may approve.

[S. 15 amended by Act 48 of 1991; by s. 12 of Act 11 of 2009 w.e.f. 1 October 2010.]



## 16. Appointments

(1) The Public Service Commission shall appoint 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) The Minister shall appoint such Probation Committees as he thinks fit to—

- (a) review the progress of probationers and supervise the work of probation officers; and
- (b) perform such other duties as may be necessary in connection with probation.

[S. 16 amended by Act 48 of 1991; repealed and replaced by s. 13 of Act 11 of 2009 w.e.f. 1 October 2010.]

## 17. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of the Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations may provide for—

- (a) the composition, powers and duties of a Probation Committee;
- (b) the powers and duties of probation officers;
- (c) the allowance payable to any person, other than a public officer, required to carry out any duties under this Act;
- (d) the levying of fees and charges; and
- (e) the amendment of the Schedule.

[S. 17 repealed and replaced by s. 14 of Act 11 of 2009 w.e.f. 1 October 2010.]

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.

**SCHEDULE**

[Section 2]

**PROBATION ORDER**

District Court of ..... /Intermediate Court/Supreme Court\*  
TAKE NOTICE that you .....  
are bound for the period of .....by the  
promise of good behaviour made this day before the said Court in accordance with  
the conditions and requirements of this Order. If you fail to observe any of the condi-  
tions or requirements of this Order, you shall be apprehended and brought before this  
Court, and to be convicted and sentenced for the offence which was, this day,  
proved against you.

**CONDITIONS**

1. That you be of good behaviour and appear before this Court for conviction and sentence when called upon to do so.
2. That you do not associate yourself with bad company.
3. That you lead an honest and industrious life.
4. That you abstain from intoxicating liquor and illicit drugs.
5. That you reside at (address) .....
6. That you be under the supervision of ..... ,  
a probation officer, or any other officer designated by the Commissioner of the Mauritius Probation and Aftercare Service, and observe the following conditions for securing such supervision—
  - (a) that you receive in your own home visits from the probation officer at such intervals as the probation officer thinks fit; and if so required by the probation officer, attend your home and elsewhere for the purpose of such visits at times fixed by the probation officer and answer truly all questions put to you by the probation officer with regard to your conduct, employment or residence; and
  - (b) that you report forthwith to the probation officer any change of your residence for place of employment.

**REQUIREMENTS**

That, furthermore, you are required to—

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**SCHEDULE**—*continued*

Given under my hand and seal of the Court on this day and  
year.....

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Magistrate/Judge\*

District Court of ..... /Intermediate Court/Supreme Court\*

\*Delete as appropriate

[Sch. inserted by s. 15 of Act 11 of 2009 w.e.f. 1 October 2010.]

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