



THE REPUBLIC OF KENYA

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THE PROBATION OF OFFENDERS ACT

CHAPTER 64

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CHAPTER 64

PROBATION OF OFFENDERS ACT

ARRANGEMENT OF SECTIONS

Section

1. Short title and application
 2. Interpretation
 3. *Spent.*
 4. Power of court to permit conditional release of offenders
 5. Probation order
 6. Further provisions where probation order made
 7. Commission of further offences by probationer
 8. Failure by probationer to comply with probation order
 9. Probation order: disqualification or disability
 10. Transmission of documents when case is remitted to another court
 11. Amendment of probation order
 12. Discharge of probation order
 13. Transmission of copies of orders for amendment or discharge of probation orders
 14. Selection of probation officers
 15. Contributions towards institutions
 16. Appointments
 17. Rules
 18. Delegation of powers
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CHAPTER 64**PROBATION OF OFFENDERS ACT***[Date of assent: 20th December, 1943.]**[Date of commencement: 20th December, 1943.]***An Act of Parliament to provide for the probation of offenders**

[Act No. 29 of 1943, Act No. 44 of 1948, Legal Notice 379 of 1957, Legal Notice 380 of 1957, Legal Notice 27 of 1960, Legal Notice 172 of 1960, Legal Notice 173 of 1960, Act No. 28 of 1961, Legal Notice 2 of 1964, Act No. 11 of 2017, Act No. 18 of 2018.]

1. Short title and application

This Act may be cited as the Probation of Offenders Act and shall apply to such areas, and from such date, as the Cabinet Secretary may, by order, from time to time declare.

[L.N. 379/1957, L.N. 172/1960.]

2. Interpretation

In this Act—

"Director" means the Director of Probation whose office is within the Public Service;

"Cabinet secretary" means the Cabinet Secretary responsible for matters relating to probation and after-care services;

"pre-sentence inquiry reports" means the reports on accused persons or offenders prepared by probation officers under this Act or any other law in force for purposes of criminal justice administration;

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

"probation officer" means a probation officer appointed under section 16;

"probation order" means an order made under this Act placing a person under the supervision of a probation officer.

[Act No. 56 of 1955, s. 2, Act No. 11 of 2017, Sch., Act No. 18 of 2018, Sch.]

3. Spent.**4. Power of court to permit conditional release of offenders**

(1) Where a person is charged with an offence which is triable by a subordinate court, and the court thinks that the charge is proved but is of the opinion that, having regard to age, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may—

- (a) convict the offender and make a probation order; or
- (b) without proceeding to conviction, make a probation order, and in either case may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.

(2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents,

home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.

(3) Before making a probation order under subsection (1) or (2), the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

(4) Where any offender against whom a probation order has been made commits a subsequent offence or fails to comply with any of the terms of the probation order, any sum the subject of any recognizance entered into by or on behalf of the offender may, in the discretion of the court, be forfeited.

(5) Before making a probation order under subsection (1) or (2), the court may consider the view of the victim as contained in the pre-sentence report prepared pursuant to subsection (6).

(6) Where a subordinate court or a superior court considers making a probation order, it shall, before making such order, direct a probation officer to conduct a social inquiry into the circumstances of the case and the accused and make a presentence report of the findings to the court.

(7) A probation officer shall, while acting on the authority of the court, have the right to access records and any other necessary information from any person or authority having such records or information for the purpose of preparing a social inquiry report.

(8) A pre-sentence report shall include a recommendation as to the suitable period of supervision, rehabilitation programmes and any measures necessary to reduce the risk of re-offending.

[Act No. 18 of 2018, Sch.]

5. Probation order

(1) A probation order shall have effect for such period, of not less than six months and of not more than three years, from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer appointed for or assigned to the district or area in which the probationer will reside after the making of the order, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters 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.

(2) 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, and where any such provision requires the probationer to reside in an institution the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Cabinet Secretary.

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

(4) The Court may extend the period of residence specified in the probation order for a further period not exceeding twelve months in exceptional circumstances and with compelling reasons provided by a probation officer.

(5) The Court may make further orders providing for an offender to attend non-residential programmes at a probation institution or any other such facility established under this Act, or at any other facility suitable for the fulfilment of the supervision order.

[Act No. 28 of 1961, Sch, Act No. 18 of 2018, Sch.]

6. Further provisions where probation order made

Where a person is placed by a probation order under the supervision of a probation officer, the order shall be without prejudice to the powers of the court, under any law for the time being in force, to order the offender to pay costs, and such damages for injury or compensation for loss as the court may think reasonable.

7. Commission of further offences by probationer

(1) If, after hearing information on oath, it appears to a judge or 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 therein or may issue a warrant for his arrest.

(2) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court named therein, and the production to the court of a probation order, purporting to bear the signature of the judge or magistrate who made it, shall be *prima facie* evidence of the due making thereof.

(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, then—

- (a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
- (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence.

(5) Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the High Court of an offence committed while the probation order was in force, then—

- (a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the High Court may convict him of that offence and may pass any sentence which the court which

made the probation order could pass if the probationer had just been convicted before that court of that offence; or

- (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the High Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence.

8. Failure by probationer to comply with probation order

(1) If, after hearing information on oath, it appears to a judge or magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest.

(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) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order, then—

- (a) without prejudice to the continuance in force of the probation order, the court may, if no moneys are liable to forfeiture by the probationer under sub-section (4) of section 4, impose on the probationer a fine not exceeding twenty thousand shillings; or
- (b) (i) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
- (ii) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence:

Provided that, where a court has, under paragraph (a), imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under section 7 or this section, the imposition of that fine shall be taken into account in fixing the amount of the sentence.

[Act No. 18 of 2018, Sch.]

9. Probation order: disqualification or disability

(1) 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 any disqualification or disability is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence, or in respect of an offence committed after a previous conviction:

Provided that, if the probationer is subsequently sentenced for the original offence, this section shall cease to apply in respect of that offence, and he shall be deemed, for the purposes of any such enactment imposing disqualification or disability, to have been convicted on the date of sentence.

(2) Where a person is released on probation without the court having proceeded to conviction and he is subsequently convicted and sentenced for the original

offence, then he shall be deemed, for the purposes of any enactment by or under which any disqualification is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after a previous conviction, to have been convicted on the date of the conviction and sentence.

10. Transmission of documents when case is remitted to another court

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 that court such particulars of the case as he thinks desirable, and, where the probationer has been convicted of a subsequent offence by a magistrate, the magistrate shall transmit to that court a certificate to that effect signed by him, and for the purposes of proceedings in the court to which it is transmitted any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

11. Amendment of probation order

(1) Subject to the provisions of this section, where, on the application of a probationer or of the Director, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provisions should be inserted or cancelled, the court may by order amend the probation order accordingly:

Provided that no order shall be made under this section reducing the period of duration of the probation order, or extending that period beyond a period of three 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 twelve months from the date of that order, if the total period or the aggregate of the periods for which he is required to reside in any institution or institutions under the probation order does not exceed twelve months.

(3) The court shall, if it is satisfied on the application of the principal probation officer that the probationer has changed, or is about to change, his residence from the district or area named in the order to another district or area, by order vary the probation order by substituting for the reference to the district or area named therein a reference to the district or area where the probationer is residing or is about to reside, and shall transmit to the court for the new district or area all documents and information relating to the case, and thereupon the latter court shall be deemed for the purposes of this Act to be the court by which the probation order was made.

(4) An order under this section cancelling a provision of a probation order or substituting a new district or area for the district or area named therein may be made without summoning the probationer, but 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 variation, insertion or cancellation of a provision requiring a probationer to reside in an institution, the court shall forthwith give notice of the terms of the order to the Cabinet Secretary.

[Act No. 28 of 1961, Sch, Act No. 18 of 2018, Sch.]

12. Discharge of probation order

(1) The court by which a probation order was made may, on the application of the probationer or of the Director, discharge the probation order, and where the

application is made by the principal 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 probation order was made, the probation order shall cease to have effect.

[Act No. 18 of 2018, Sch.]

13. Transmission of copies of orders for amendment or discharge of probation orders

Where an order is made for the amendment or discharge of a probation order, the clerk or other officer of the court by which the order is made shall furnish two copies of the order to the Director, one copy of which shall be given by the principal probation officer to the probationer.

[Act No. 18 of 2018, Sch.]

14. Selection of probation officers

(1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the Director.

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

[Act No. 18 of 2018, Sch.]

15. Contributions towards institutions

Such contributions may be made towards the establishment or maintenance of institutions for the reception of persons placed under the supervision of probation officers as Parliament may approve.

16. Appointments

(1) The Public Service Commission shall appoint—

- (a) a Director, who shall organise and supervise the probation service in accordance with rules 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 by rules made under this Act.

(2) The Cabinet Secretary* may appoint a probation committee or probation committees, consisting of such persons as the Cabinet Secretary shall think fit, who shall review the work of probation officers in individual cases and perform such duties in connection with probation as may be prescribed by rules made under this Act.

[L.N. 379/1957, L.N. 380/1957, L.N. 172/1960,
Act No. 11 of 2017, Sch., Act No. 18 of 2018, Sch.]

*Powers under section 16 (2) to appoint chairpersons and members of Probation Case Committees delegated to the Principal Secretary (L.N. 69/1968)

[L.N. 380/1957, L.N. 173/1960, Act No. 18 of 2018, Sch.]

17. Rules

The Cabinet Secretary may make rules prescribing—

- (a) the duties of the Director;

- (b) the duties of probation officers;
- (c) the constitution and duties of a probation committee or probation committees;
- (d) the form of records to be kept under this Act;
- (e) what shall be an institution for the purposes of this Act;
- (f) 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;
- (g) generally for carrying out the purposes and provisions of this Act.

[L.N. 380/1957, L.N. 173/1960, Act No. 18 of 2018, Sch.]

18. Delegation of powers

The Director may in writing delegate all or any of his powers, duties or functions in relation to any probationer, to any probation officer who is responsible for the supervision of the probationer.

[Act No. 18 of 2018, Sch.]
