

CHAPTER 40.

PROBATION OF OFFENDERS.

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CHAPTER 40.

PROBATION OF OFFENDERS.

An Ordinance to Provide for the Probation of Offenders.

19 of 1950.
9 of 1953.

[30TH DECEMBER, 1950.]

1. This Ordinance may be cited as the Probation of Offenders Ordinance, and shall apply to the Colony and Protectorate. Short title.
2. In this Ordinance, unless the context otherwise requires— Interpreta-
tion.
 - “ Probation Order ” means an Order under this Ordinance placing a person under the supervision of a Probation Officer;
 - “ probationer ” means a person placed under supervision by a Probation Order;
 - “ Principal Probation Officer ” means the person appointed to be the Principal Probation Officer under this Ordinance;
 - “ Probation Officer ” means a person appointed to be a Probation Officer under this Ordinance.

Absolute and conditional discharge.

3. (1) When any person is charged with an offence which is punishable on summary conviction and the court thinks that the charge is proved but is of the opinion, that having regard to the circumstances including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender absolutely or conditionally on probation, the court may, with or without proceeding to conviction, discharge the offender absolutely or conditionally on his entering into a recognisance with or without sureties to be of good behaviour and to appear for sentence or for conviction and sentence when called on at any time during such a period of not less than one year and of not more than three years as may be specified in the order.

(2) When any person is convicted of an offence which is not punishable on summary conviction and the court is of the opinion, that having regard to the circumstances including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender absolutely or conditionally, the court may in lieu of imposing a sentence of imprisonment make an order discharging the offender absolutely or conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for sentence when called on at any time during such a period of not less than one year and of not more than three years as may be specified in the order.

Probation Orders.

4. (1) A recognisance ordered to be entered into under this Ordinance shall, if the court so order, contain a condition that the offender be under the supervision of such person during the period specified in the order and such other conditions for securing such supervision as may be specified in the order and, an order requiring the insertion of such conditions as aforesaid in the recognisance is in this Ordinance referred to as a Probation Order.

A Probation Order shall not be made unless the court be satisfied that the offender is normally resident in an area for which a Probation Officer has been appointed.

(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 Governor.

(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.

5. Before making an order under this Ordinance, 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 while the order is in force, he will be liable to be convicted and sentenced, or where the court has proceeded to conviction, to be sentenced, for the original offence and the court shall not make such an order unless the offender expresses his willingness to comply with the provisions of the order.

Order not to be made except with consent of offender.

6. Where an order under this Ordinance is made without the court proceeding to conviction, the court shall have the same powers—

Damages, costs and restitution of stolen property.

(a) of awarding damages and costs against the offender as is conferred upon it by sections 47, 48 and 50 of the Criminal Procedure Ordinance in the event of a conviction, and such damages and costs shall be recoverable as provided in section 51 thereof; and

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(b) of ordering the restitution of any property stolen or otherwise obtained by the offender by means of any felony or misdemeanour, as is conferred upon it by section 53 of the Criminal Procedure Ordinance in the event of a conviction for such offence.

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7. (1) If it appears to a Judge or a Magistrate that an offender, whose discharge has been subject to conditions imposed by an order made under sections 3 or 4, has been convicted of an offence while such conditions were in force, he may issue a summons requiring the offender to appear at the time and place specified therein or may issue a warrant for his arrest:

Commission of further offences by probationers or persons discharged conditionally.

Provided that such a summons shall not be issued except on information, and such a warrant shall not be issued except on information in writing and on oath.

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

(3) Where it is proved to the satisfaction of the court by which the order was made that the offender has been convicted

of an offence while the conditions imposed under sections 3 or 4 were in force, then—

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

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

(4) Where an offender has been convicted of a subsequent offence, a certificate to that effect, signed in the case of a conviction before a Judge, by the Master and Registrar of the Supreme Court or, in the case of a conviction before a Magistrate, by such Magistrate, shall be transmitted by the Master and Registrar or Magistrate, as the case may be, to the court which made the order, and for the purposes of proceedings before that court, any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

Failure by probationer to comply with Probation Order.

8. (1) If it appears to a Judge or a 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:

Provided that such a summons shall not be issued except on information and such a warrant shall not be issued except on 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) 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 impose on the probationer a fine not exceeding ten pounds; 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.

9. (1) Where a person is convicted of an offence and is released on recognisance, 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:

Disqualification or disability of offenders.

Provided that, if the offender 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 a disqualification or disability, to have been convicted on the date of sentence.

(2) Where a person is released on recognisance 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 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, to have been convicted on the date of such conviction and sentence.

10. (1) Subject to the provisions of this section where, on the application of a probationer, or of the Probation Officer responsible for his supervision, or of the Principal Probation Officer, 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:

Variation to terms and conditions of Probation Orders.

Provided that no order may be made under this section extending the period of duration of the Probation Order beyond a period of three years from the date on which the Probation Order was made.

(2) An order under the foregoing sub-section 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 of 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) No order under this section except one which cancels a provision of the Probation Order shall be made except on the application or in the presence of the probationer.

Discharge
of Probation
Order.

11. 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 or of the Principal Probation Officer, discharge the Probation Order, and may deal with it without summoning the probationer.

Transmission
of copies of
orders for
amendment
or discharge
of Probation
Orders.

12. Where an order is made for the amendment or discharge of a Probation Order, the court by which the order is made shall furnish two copies of the order to the Probation Officer responsible for the supervision of the probationer, one copy to be given by him to the probationer.

Litigation of
forfeiture of
recognisance.

13. Where a person bound by his recognisance to appear for sentence or conviction and sentence under this Ordinance is subsequently sentenced or convicted and sentenced for the original offence and his recognisance is adjudged by the court to be forfeited, the court instead of adjudging the persons bound thereby to pay the sum for which they are respectively bound may, as it thinks fit, adjudge those persons or any of them to pay part only of those sums or may, as respects all or any of those persons, remit payment thereof.

Selection of
Probation
Officer.

14. (1) The person to act as Probation Officer shall be the person so appointed for the area in which the probationer shall reside.

(2) Where possible where a woman or girl is placed under the supervision of a Probation Officer the Probation Officer shall be a woman.

(3) Where the Probation Officer has died or is unable for any reason to carry out his duties, the court before which the offender is bound shall, on the application of the Principal Probation Officer, appoint another Probation Officer to undertake supervision in respect of the case.

Contribu-
tions.

15. Such contributions may be made towards the establishment or maintenance of homes or hostels for the reception of persons placed under the supervision of Probation Officers as may be approved by the Governor in Council.

16. The Governor shall appoint—Appoint-
ments.

(a) a Principal Probation Officer who shall organise and supervise the probation service in the Colony and Protectorate in accordance with rules made under this Ordinance, and

(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 Ordinance.

17. The Governor in Council may by order make rules prescribing—

Rules.

(a) the duties of the Principal Probation Officer.

(b) the duties of Probation Officers.

(c) the form of records to be kept under this Ordinance.

(d) the remuneration of any person appointed to carry out any duties under this Ordinance, and the fees and charges to be made for any act, matter or thing under this Ordinance to be done or observed.

(e) probation areas and assigning Probation Officers thereto.

(f) the manner in which any fine imposed under subsection (3) (a) of section 7 may be paid.

(g) generally for carrying the purposes or provisions of this Ordinance into effect.
