

CHAPTER 146**PROBATION OF OFFENDERS****ARRANGEMENT OF SECTIONS****SECTION**

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CHAPTER 146**PROBATION OF OFFENDERS**

An Act to provide for the probation of offenders.

1945-4.
1949-5.
1956-57.
L.N. 168/
1967.

[9th May, 1946] Commence-
ment.

1. This Act may be cited as the Probation of Offenders Act. Short title.

2. For the purposes of this Act, the expression—
“probation order” means an order made under this Act
placing a person under the supervision of a probation
officer;

Inter-
pretation.

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

3. (1) Where 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 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 on probation, the court may,
subject to subsection (2),—

Probation
in relation
to summary
offences.

- (a) convict the offender and make a probation order, or
- (b) without proceeding to conviction, make a probation
order.

(2) Before making a probation order under subsection (1),
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
therewith or commits another offence, he is liable to be
sentenced or to be convicted and 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.

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Probation
in relation
to other
offences.

4. (1) Where any person is convicted of an offence which is not punishable on summary conviction and the court is of 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 on probation, the court may, subject to subsection (2), in lieu of imposing a sentence of imprisonment make a probation order.

(2) Before making a probation order under subsection (1), 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 is 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.

Probation
order.

5. (1) A probation order shall—

- (a) have effect for such period not less than one year and not more than three years from the date of the order as may be specified therein; and
- (b) require the probationer to submit during that period to the supervision of a probation officer; and
- (c) 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.

(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.

Compensa-
tion may be
ordered in
addition to
probation.

6. (1) Where a person is placed by a probation order 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, in the case of an order made by a court of summary jurisdiction, exceeding in the aggregate twenty-four dollars or such greater sum as may be allowed by any enactment relating to the offence.

(2) Where a court makes any such order for the payment of damages, compensation or costs, the order may be enforced—

(a) in the case of an offence punishable on summary conviction, in the manner laid down in the Magistrates Jurisdiction and Procedure Act for enforcing the payment of a sum adjudged to be paid by conviction; Cap. 116.
1956-57.

(b) in any other case, in like manner as is provided in sections 73 and 74 of the Offences against the Person Act in respect of an order for the payment of actual and necessary costs and expenses. Cap. 141.

7. Where, in any proceedings in which a magistrate makes a probation order against the offender, either party is dissatisfied with his decision, such party may appeal therefrom in accordance with the Magistrates Jurisdiction and Procedure Act. Appeals.
1956-57.

8. (1) Where it appears to a Judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may, subject to subsection (2), issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest. Commission
of further
offences by
probationers.

(2) A magistrate shall not issue such a summons except on information and shall not issue such a warrant except on information in writing and on oath.

(3) 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.

(4) 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

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brought or appear before the court by which the probation order was made.

(5) 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.

(6) 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.

Failure by probationer to comply with probation order.

9. (1) Where it appears to a Judge or any magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may, subject to subsection (2), 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 magistrate shall not issue such a summons except on information and shall not issue such a warrant except on information in writing and on oath.

(3) 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.

(4) Where 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 of forty-eight dollars; or
- (b) 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
- (c) 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 court has, under sub-paragraph (a) of subsection (4), imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under section 8 or this section, the imposition of the fine shall be taken into account in fixing the amount of that sentence.

10. (1) Where a person is convicted of an offence and is released under a probation order, his conviction for that offence shall, subject to subsection (2), 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

Disqualifica-
tion or
disability of
probationer.

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of a second or subsequent offence or in respect of an offence committed after previous conviction.

(2) Where 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 a disqualification or disability, to have been convicted on the date of sentence.

(3) 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 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.

Transmission
of documents
when case is
remitted to
another
court.

11. (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 said court such particulars of the case as he thinks desirable.

(2) Where the probationer has been convicted of a subsequent offence by a magistrate, the magistrate shall transmit to the court which made the probation order a certificate to that effect, signed by him, and for the purposes of proceedings in that court any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

Amendment
of probation
orders.

12. (1) 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 provisions of the probation order should be varied or that any provisions should be inserted or cancelled, the court may, subject to subsection (2), by order amend the probation order accordingly.

(2) No order shall be made under this section reducing the period of duration of the probation order or expanding that period beyond a period of three years from the date of the probation order.

(3) The court shall, if it 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, by order vary the probation order by substituting for the reference to the district named therein a reference to the district where the probationer is residing or is about to reside.

(4) An order under this section cancelling a provision of a probation order or substituting a new district for the district 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.

13. (1) 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 and, where the application is made by the probation officer, the court may deal with it without summoning the probationer.

Discharge of probation orders.

(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.

14. 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 or, in the case of an order for the discharge of a probation order, to the probation officer who was so responsible before the making of the order, and the probation officer shall give one of such copies to the probationer.

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

15. (1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the court which makes the probation order, and if the probation officer so selected dies or is unable for any reason to carry out his duties, another probation officer shall be selected by the court.

Selection of probation officers.

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

Duties of
probation
officers.

16. Every probation officer shall perform such duties as may be prescribed.

Rules.

L.N. 168/
1967.

17. The Minister may by order make rules prescribing—

- (a) the duties of probation officers;
- (b) the form of records to be kept under this Act;
- (c) generally for carrying the purposes or provisions of this Act into effect.