

Zambia

Probation of Offenders Act, 1953

Chapter 93

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1953/15/eng@1996-12-31

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PDF created on 17 March 2023 at 14:17.

Collection last checked for updates: 31 December 1996.

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Probation of Offenders Act, 1953

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Probation of Offenders Act, 1953 Chapter 93

Commenced on 4 December 1953

[This is the version of this document at 31 December 1996.]

[15 of 1953; 13 of 1961; 14 of 1963; 21 of 1964; 13 of 1994; Government Notices 276 of 1964; 497 of 1964]

An Act to provide for the probation of offenders; and to provide for matters incidental thereto.

1. Short title and application

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

[As amended by G.N. No. 276 of 1964]

2. Interpretation

In this Act, unless the context otherwise requires—

"probation officer" means a probation officer appointed under the provisions of section fifteen;

"probation order" has the meaning assigned to it by section three;

"probation period" means the period for which a probationer is placed under supervision by virtue of a probation order;

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

"senior probation officer" means a senior probation officer appointed under the provisions of section fifteen.

[As amended by No. 13 of 1961]

3. Power to make probation orders

(1) 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 the opinion that, having regard to the youth, 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 do so, the court may, instead of sentencing him, make an order, hereinafter in this Act referred to as a "probation order", requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than one year nor more than three years.

(2) Before making a probation order, the court shall satisfy itself that the offender understands the effects of the order, including any additional requirements proposed to be inserted therein under subsections (2) and (3) of section four, and that if he fails to comply therewith or commits another offence during the probation period he will be liable to be sentenced for the original offence; and if the offender is not less than nineteen years of age the court shall not make the order unless he expresses his willingness to comply with the requirements thereof.

[As amended by No. 14 of 1963]

4. Contents of probation orders

(1) A probation order shall name the District in which the probationer resides or will reside, and the probationer shall notify the probation officer responsible for his supervision of any change of residence.

(2) A probation order may require the probationer to comply during the whole or any part of the probation period with such 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 by him of the same offence or the commission of other offences:

Provided that, without prejudice to the powers of the court to make an order for the payment of sums by way of costs, damages or compensation, the payment of such sums shall not be included among the requirements of a probation order.

(3) Without prejudice to the generality of subsection (2), a probation order may include requirements relating to the residence of the probationer:

Provided that—

(i) before making an order containing any such requirements, the court shall consider the home surroundings of the offender; and

(ii) where the order requires the probationer to reside in an institution, the name of the institution and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the order.

(4) Where a probation order requires the probationer to reside in any institution, the court making the order shall forthwith give notice of the terms of the order to the Minister.

(5) Where the District named in a probation order as the District in which the probationer resides or will reside is not the District in which the order is made, the court shall transmit to the court for the District named all documents and information relating to the case, and thereupon the last-mentioned court shall be deemed for all the purposes of this Act to be the court by which the probation order was made.

[As amended by No. 13 of 1961]

5. Probation order may require probationer to submit to treatment of mental condition

(1) Where the court is satisfied, on the evidence of a registered medical practitioner, appearing to the court to be experienced in the diagnosis of mental disorders, that the mental condition of an offender is such as requires and may be susceptible to treatment, but is not such as to justify his being adjudicated as a mentally disordered or defective person under the Mental Disorders Act, the court may, if it makes a probation order, include therein a requirement that the offender shall submit for such period, as may be specified therein, not extending beyond twelve months from the date of the order, to treatment by or under the direction of a duly qualified medical practitioner with a view to the improvement of the offender's mental condition.

(2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say:

(a) treatment as a resident patient in such institution or place prescribed for the purpose of this section as may be specified in the order;

(b) treatment as a non-resident patient at such institution or place as may be specified in the order;

- (c) treatment by or under the direction of such duly qualified medical practitioner as may be specified in the order; but, except as aforesaid, the nature of the treatment shall not be specified in the order.
- (3) A court shall not make a probation order containing such a requirement as aforesaid unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order, and, if the offender is to be treated as a resident patient as aforesaid, for his reception.
- (4) While the probationer is under treatment as a resident patient in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the discharge or amendment of the order.
- (5) Where the medical practitioner by whom or under whose direction a probationer is being treated for his mental condition in pursuance of a probation order, is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place not specified in the order, being an institution or place in or at which the treatment of the probationer will be given by or under the direction of a duly qualified medical practitioner, he may, with the consent of the probationer, make arrangements for him to be treated accordingly, and to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified in that behalf in the probation order.

[As amended by No. 13 of 1961]

[Cap. 305]

6. Copies of orders

The court by which a probation order is made or which makes an order amending or discharging a probation order shall furnish copies of the order to the probationer, the principal probation officer, the probation officer responsible for the supervision of the probationer, and to the person in charge of the institution, if any, in which the probationer is to reside or is residing.

[As amended by No. 13 of 1961 and No. 21 of 1964]

7. Failure of probationer to comply with probation order

- (1) If at any time during the probation period it appears to any 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:
Provided that a magistrate shall not issue such a summons or such a warrant except on information 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 a fine not exceeding three hundred penalty units; or
 - (b) the court may pass any sentence in respect of the original offence in respect of which the probation order was made which it could pass if the probationer had just been convicted before the court of that offence:

Provided that where a court has, under the provisions of paragraph (a), imposed a fine on the probationer, then, upon any subsequent sentence being passed upon the probationer under the

provisions of this section or the next following section, the imposition of the said fine shall be taken into account in fixing the amount of the said sentence.

[As amended by Act No. 13 of 1994]

8. Commission of further offences by probationers

- (1) If it appears to any Judge or magistrate that a probationer has been convicted of an offence committed during the probation period, 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:
Provided that a magistrate shall not issue such a summons or such a warrant except on information on oath.
- (2) A summons or warrant issued under subsection (1) 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 during the probation period, 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 committed during the probation period, such court may pass any sentence in respect of the original offence which it could pass if the probationer had just been convicted before that court of such offence.
- (5) Where a probationer is convicted before the High Court of an offence committed during the probation period, the High Court may pass any sentence which the court which made the probation order could pass if the probationer had just then been convicted before that court of the original offence.

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

Where a magistrate commits a probationer to custody, or releases him on bail, under the provisions of subsection (3) of section eight, the magistrate shall transmit to the court by which the probation order was made—

- (a) such particulars of the matter as he thinks fit; and
- (b) a signed certificate of the conviction for the offence committed during the probationary period; and, for the purposes of the proceedings in the court to which it is transmitted, such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

10. No conviction in case where probation order made

- (1) Subject as hereinafter provided, a conviction for an offence for which a probation order is made shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the foregoing provisions of this Act.

Provided that where an offender, being not less than nineteen years of age at the time of his conviction for an offence for which he is placed on probation, is subsequently sentenced under this Act, the provisions of this subsection shall cease to apply to the conviction.

- (2) Without prejudice to the provisions of subsection (1), the conviction of an offender who is placed on probation shall, in any event, be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted persons, or authorises or requires the imposition of any such disqualification or disability.

- (3) The foregoing provisions of this section shall not affect—
- (a) any right of such offender as aforesaid to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;
 - (b) the revesting or restoration of any property in consequence of the conviction of any such offender.
- [As amended by No. 21 of 1964]*

11. Amendment of probation orders

- (1) Subject to the provisions of this section, where, on the application of a probationer or of the probation officer responsible for the supervision of the probationer, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provision 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 probation period, 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 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 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 about to reside, and shall transmit to the court for the new District all documents and information relating to the case, and thereupon the last-mentioned court shall be deemed for all the purposes of this Act to be the court by which the probation order was made.
 - (4) Where an application is made by the probation officer responsible for the supervision of the probationer under this section, the court shall summon the probationer to appear before the court; and if the probationer is not less than nineteen years of age, the court shall not amend a probation order unless the probationer expresses his willingness to comply with the requirements of the order as amended:

Provided that this subsection shall not apply to an order cancelling a requirement of the probation order or reducing the period of any requirement or substituting a new District for the District named in the order.
 - (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 Minister.
- [As amended by No. 13 of 1961 and No. 21 of 1964]*

12. Discharge of probation orders

- (1) The court by which a probation order was made may, on the application of the probationer or the probation officer responsible for the supervision of the probationer, discharge the probation order, and, where the application is made by the probation officer responsible for the supervision of the probationer, 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.

[As amended by No. 13 of 1961]

13. Selection of probation officers

- (1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by a senior probation officer.
- (2) Where a woman or girl is placed under the supervision of a probation officer, the probation officer shall be a woman.

[As amended by No. 13 of 1961]

14. Contribution towards probationers and institutions

Such contribution may be made towards the maintenance of probationers and the establishment or maintenance of institutions for the reception of probationers as Parliament may approve.

[As amended by No. 13 of 1961 and G.N. No. 276 of 1964]

15. Appointments

The Minister may appoint—

- (a) a principal probation officer;
- (b) such number of senior probation officers as he may deem necessary;
- (c) a sufficient number of probation officers to perform such duties as may be prescribed.

[As amended by No. 13 of 1961]

16. Powers and duties and delegation

- (1) The principal probation officer may exercise or perform all the powers and duties of a senior probation officer or of a probation officer.
- (2) The principal probation officer may delegate all or any of his powers or duties in relation to any probationer to a senior probation officer, or to the probation officer who is responsible for the supervision of the probationer.
- (3) A senior probation officer may exercise or perform all or any of the powers and duties of a probation officer.

[As amended by No. 13 of 1961]

17. Probation Committee

- (1) The Minister may, by *Gazette* notice, establish a Probation Committee which shall consist of such persons as the Minister may appoint.
- (2) The Probation Committee shall exercise and perform such powers and duties, incur such expenses and regulate its procedure in such manner as may be prescribed.

[As amended by No. 13 of 1961]

18. Regulations

- (1) The Minister may, by statutory instrument, make regulations for carrying this Act into effect.
- (2) Without prejudice to the generality of the foregoing power, such regulations may prescribe—
 - (a) the duties of the principal probation officer;
 - (b) the duties of senior probation officers and 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) anything to be prescribed under this Act.

[As amended by No. 13 of 1961]