

Probation of Offenders Law was repealed by s57(2) Alternative Sentencing Law, 2006, when it came into force on 2<sup>nd</sup> May 2011. (By that time the Law had been Revised and named Alternative Sentencing Law (2008 Revision))

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**THE PROBATION OF OFFENDERS LAW (CAP. 136)**

**(1999 Revision)**

Revised under the authority of the Law Revision Law (19 of 1975).

Originally enacted-

Cap. 136-1st January 1964.

Revised this 15th day of December, 1998.



## **PROBATION OF OFFENDERS LAW**

**(1999 Revision)**

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## PROBATION OF OFFENDERS LAW

(1999 Revision)

1. This Law may be cited as the Probation of Offenders Law (1999 Revision). Short title

2. In this Law- Definitions

“Judge” means a Judge of the Grand Court;

“magistrate” includes Stipendiary Magistrate and Justice of the Peace;

“principal probation officer” means a person appointed to be a principal probation officer under this Law;

“probation committee” means a committee appointed to be a probation committee under this Law;

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

“probation officer” means a person appointed to be a probation officer under this Law; and

“probation order” means an order made under this Law placing a person under the supervision of a probation officer.

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-

Power of Court to permit conditional release of offenders

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

Provided that, 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 therewith or commits another offence, he will be 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 order.

(2) 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 in lieu of imposing a sentence of imprisonment, make a probation order:

Provided that, 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 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 order.

Probation order

4. (1) A probation order shall have effect for such period being not less than one year and 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 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 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.

Further provisions  
where court makes  
probation order

5. (1) Where a person is placed by a probation order under the supervision of a probation officer, the court may, without prejudice to its powers 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 fifty 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 or compensation as aforesaid, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to

making such 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.

6. (1) If 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 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

Provided that a magistrate shall not issue such a summons or warrant 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, then, if the probationer -

- (a) 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) 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 Grand Court of an offence committed while the probation order was in force, then, if the probationer -

- (a) was not convicted of the original offence in respect of which the probation order was made, the Grand 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) was convicted of the original offence in respect of which the probation order was made, the Grand 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

7. (1) If 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:

Provided that 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.

(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 of twenty dollars; 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 6 or this section, the imposition of the said fine shall be taken into account in fixing the amount of the sentence.

Probation order; disqualification or disability

8. (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 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 a 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 such conviction and sentence.

9. 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, and where the probationer has been convicted of a subsequent offence by a magistrate, the magistrate shall transmit to the said 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.

Transmission of documents when case is remitted to another court

10. (1) Subject to subsections (2) to (5), 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, by order, amend the probation order accordingly:

Amendment of probation order

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 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, 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 Law, 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 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.

(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 Governor.

Discharge of probationer

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, discharge the probation order, and, 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 probation order was made, the probation order shall cease to have effect.

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

12. Where an order is made for the amendment or discharge of a probation order, the clerk of 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, one copy to be given by him to the probationer.

Power to release offenders conditionally upon entering into recognizances

13. (1) Subject to subsections (3) and (4), in any case where a court might make a probation order under paragraph (a) of section 3(1) or under section 3(2), if the court is of the opinion that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation officer, the court may convict the offender and make an order discharging the offender conditionally upon his entering into a recognizance, with or without surety, to be of good behaviour and to appear for sentence when called

upon at any time during such period not exceeding three years as may be specified in the recognizance.

(2) Subject to subsections (3) and (4), in any case where a court might make a probation order under paragraph (b) of section 3(1), if the court is satisfied that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation officer, the court may, without proceeding to conviction, make an order discharging the offender conditionally upon his entering into a recognizance, with or without a surety, to be of good behaviour and to appear for conviction and sentence when called upon, at any time during such period not exceeding three years, as may be specified in the recognizance.

(3) Before making an order under this section, the court shall explain to the offender in ordinary language the effect of the recognizance into which he is to be required to enter and that if he fails in any respect to comply therewith or commits another offence, he will be liable in the case of an offender who is required to enter into a recognizance under subsection (2) to be convicted and sentenced for the original offence and in the case of an offender who is required to enter into a recognizance under subsection (1) to be sentenced for the original offence, and in either case his recognizance will be liable to be estreated.

(4) No order shall be made under this section unless the offender expresses his willingness to comply with the conditions of the recognizance into which he is required by such order to enter.

14. (1) Every recognizance entered into pursuant to an order under section 13 shall contain such conditions (being conditions which might be contained in a probation order under this Law) as may be specified in such order.

Recognizances

(2) Where a recognizance contains a condition as to residence, the place at which and the period for which the person who enters into the recognizance is to reside shall be specified in the recognizance, and where any such condition requires such person to reside in an institution, the period for which such person is required so to reside shall not extend beyond twelve months from the date of the recognizance.

(3) The court by which any order under section 13 is made shall furnish a copy of the recognizance entered into pursuant to such order to the person who enters into such recognizance.

*Probation of Offenders Law (1999 Revision)*

Application of certain provisions to persons entering into recognizances under section 13  
Selection of probation officers

15. Sections 5 to 12 shall apply to any person required, under section 13, to enter into a recognizance as they apply to a probationer, subject to the modifications specified in the Schedule.

16. (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, or if the probation committee dealing with the case considers it desirable that another officer shall take his place, another probation officer shall be selected by the court.

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

Provided that the Governor in Council may, by order, suspend the application of this subsection to any district specified in such order for such period as may be so specified.

Contributions towards homes and hostels

17. 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 provided by Resolution of the Legislative Assembly.

Appointments

18. The Governor shall appoint-

- (a) a principal probation officer who shall organise and supervise the probation service in the Islands in accordance with rules made under this Law;
- (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 Law; and
- (c) a probation committee or probation committees, consisting of such persons as the Governor 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 Law.

Rules

19. The Governor in Council may by order make rules prescribing-

- (a) the duties of a principal probation officer;
- (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 Law;

- (e) the remuneration of any person appointed to carry out any duties under this Law and the fees and charges to be made for any act, matter or thing under this Law to be done or observed; and
- (f) generally for carrying the purposes or provisions of this Law into effect.

**SCHEDULE**

(Section 15)

Sections to be modified	Nature of Modification
Sections 5 to 9, and 11	<ul style="list-style-type: none"><li>(1) The substitution for references to a probationer of references to a person required under section 13 to enter into a recognizance.</li><li>(2) The substitution for references to the court by which a probation order was made of references to the court by which an order was made under section 13 requiring an offender to enter into a recognizance.</li><li>(3) The substitution for references to a probation order of references to a recognizance required to be entered into under section 13.</li><li>(4) The deletion of all references to a probation officer.</li></ul>
Section 10	<ul style="list-style-type: none"><li>(1) The substitution for all references to a probationer of references to a person required under section 13 to enter into a recognizance.</li><li>(2) The substitution for all references to a probation order of references to a recognizance.</li><li>(3) The substitution for all references to the terms of a probation order of references to the conditions of a recognizance.</li><li>(4) The deletion from subsection (1) of the reference to a probation officer.</li><li>(5) The insertion of the following proviso as a further proviso to subsection (1) -</li></ul>

“Further provided that no order shall be made under this section varying a recognizance entered into with a surety unless the surety consents to the variation of such recognizance, so, however, that where the court is satisfied that it is expedient to vary any recognizance entered into with a surety and the surety does not consent to such variation, the court may discharge the surety from all liability under the recognizance and thereupon may vary the recognizance by order under this section.”.

(6) The deletion from subsection (3) of the words “probation officer responsible for the supervision of the probationer, that the probationer” and the substitution therefor of the words “person required to enter into a recognizance under section 13 or his surety that the person first referred to in this subsection”.

Section 12

(1) The substitution for the reference to a probation order of a reference to a recognizance.

(2) The deletion of all the words coming after the word “furnish” in the section and the substitution therefor of the following words-

“one copy of the order to the person required to enter into the recognizance and one copy to each of his sureties (if any).”.

Publication in revised form authorised by the Governor in Council this 15th day of December, 1998.

Carmena H. Parsons  
Clerk of Executive Council