

ORDINANCE No. XXIX of 1943

Assented to in His Majesty's name this twentieth day of
December, 1943.

HENRY MOORE,
Governor.

An Ordinance to Provide for the Probation of Offenders

By Proclamation

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Probation of Offenders Ordinance, 1943, and shall apply to such areas of the Colony and from such date as the Governor may, by proclamation, from time to time declare.

2. In this Ordinance, unless the context otherwise requires—
“court” means a court of competent jurisdiction but does not include a Native Tribunal established under the Native Tribunals Ordinance, 1930;

“judge” means a judge of the Supreme Court;

“magistrate” means a magistrate empowered to hold a subordinate court;

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

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

“probation officer” means a probation officer appointed under the provision of section 15 of this Ordinance;

“subordinate court” means a subordinate court of the first, second or third class.

3. (1) Where any 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 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 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:

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 provisions of the order.

(2) Where any person is convicted of an offence by the Supreme Court and the court is of the opinion that, having regard to the youth,

Date of commencement.

Short title and application.

Interpretation.

No. 39 of 1930.

Power of court to permit conditional release of offenders.

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:

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 provisions of the order.

Probation order.

4. (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 Chief 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.

Further provisions where court makes probation order.

5. Where a person is placed by a probation order under the supervision of a probation officer such 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.

Commission of further offences by probationers.

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:

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 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—

(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 Supreme 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 Supreme 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 Supreme 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.

7. (1) If 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 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:

Failure by probationer to comply with probation order.

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 on the probationer a fine not exceeding two hundred 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 the provisions of subparagraph (a) imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under the provisions of the preceding section or of this section, the imposition of the said fine shall be taken into account in fixing the amount of the said 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 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.

Transmission
of documents
when case is
remitted to
another court.

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.

Amendment of
probation orders.

10. (1) Subject to the provisions of this section, where on the application of a probationer 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:

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 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 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 last-mentioned court shall be deemed for all the purposes of this Ordinance 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 Chief Secretary.

11. (1) The court by which a probation order was made may, on the application of the probationer or of the principal probation officer, 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.

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.

12. 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 principal probation officer, one copy of which shall be given by the principal probation officer to the probationer.

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

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

Selection of probation officers.

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

Contributions
towards
institutions.

14. 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 the Legislative Council of the Colony may approve.

Appointments.

15. (1) The Governor shall appoint—

(a) a principal probation officer who shall organize and supervise the probation service in the Colony in accordance with rules made under this Ordinance;

(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.

(2) The Governor may appoint 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 connexion with probation as may be prescribed by rules made under this Ordinance.

Rules.

16. The Governor in Council may make Rules prescribing—

(a) the duties of the 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 Ordinance;

(e) what shall be an institution for the purposes of this Ordinance;

(f) 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;

(g) generally for carrying out the purposes and provisions of this Ordinance.

Delegation
of powers.

17. The principal probation officer or any of his powers, duties or powers, duties to any probation officer or probationer.

Repeal.

No. 22 of 1934.

18. Section 11 and j
Ordinance, 1934, are here