

**SOUTH AUSTRALIA**

**OFFENDERS PROBATION ACT, 1913**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 19 August 1985.*

*The Commissioner of Statute Revision is authorised by the Acts Republication Act, 1967, to make textual alterations of various kinds to an Act in preparing it for reprint. These alterations do not affect the substantive law; they are designed to bring the form and language of the Act into conformity with contemporary standards of good drafting (so far as that object can be achieved without risk of semantic change).*

*A report has been prepared containing a comprehensive list of the textual alterations made under the Acts Republication Act, 1967, in the preparation of this reprint. Copies of the report are available, on request, from the office of the Commissioner of Statute Revision, 11th Floor, S.G.I.C. Building, Victoria Square, Adelaide.*

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# OFFENDERS PROBATION ACT, 1913

being

Offenders Probation Act, 1913, No. 1121 of 1913 [Assented to 11 December 1913]

as amended by

Statute Law Revision Act, 1934, No. 2168 of 1934 [Assented to 15 November 1934];  
Offenders Probation Act Amendment Act, 1945, No. 25 of 1945 [Assented to 20 December 1945];  
Offenders Probation Act Amendment Act, 1951, No. 29 of 1951 [Assented to 22 November 1951];  
Offenders Probation Act Amendment Act, 1953, No. 15 of 1953 [Assented to 5 November 1953];  
Offenders Probation Act Amendment Act, 1963, No. 19 of 1963 [Assented to 7 November 1963];  
Offenders Probation Act Amendment Act, 1969, No. 79 of 1969 [Assented to 11 December 1969];  
Offenders Probation Act Amendment Act (No. 2), 1969, No. 95 of 1969 [Assented to 11 December 1969];  
Juvenile Courts Act, 1971, No. 69 of 1971 [Assented to 4 November 1971]<sup>1</sup>;  
Offenders Probation Act Amendment Act, 1971, No. 85 of 1971 [Assented to 25 November 1971]<sup>2</sup>;  
Offenders Probation Act Amendment Act, 1981, No. 53 of 1981 [Assented to 25 June 1981]<sup>3</sup>;  
Offenders Probation Act Amendment Act, 1982, No. 51 of 1982 [Assented to 21 June 1982]<sup>4</sup>;  
Statutes Amendment (Bail) Act, 1985, No. 6 of 1985 [Assented to 7 March 1985]<sup>5</sup>.

## **An Act to permit the release on probation of offenders in certain cases, and for other matters incidental thereto.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Offenders Probation Act, 1913".

Short title.

2. In this Act, unless a contrary intention clearly appears—

Interpretation.

"community service centre" means any premises declared to be a community service centre under this Act:

Def. inserted by 53, 1981, s. 3 (a).

"community service officer" means a probation officer holding, or acting in, the office of community service officer:

Def. inserted by 53, 1981, s. 3 (a).

"court" means—

- (a) the Supreme Court or a Judge of the Supreme Court;
- (b) a District Criminal Court as defined by section 4 (3) of the Local and District Criminal Courts Act, 1926;

Def. amended by 19, 1963, s. 3 (a); substituted by 79, 1969, s. 3.

or

- (c) a court of summary jurisdiction,

before which or before whom a person is charged with an offence:

<sup>1</sup> Came into operation 31 August 1970: *Gaz.* 20 August 1970, p. 696.

<sup>2</sup> Ss. 1-5, 17-24 came into operation 23 December 1971: *Gaz.* 23 December 1971, p. 2630; remainder of Act came into operation 1 July 1972: *Gaz.* 29 June 1972, p. 2690.

<sup>3</sup> Came into operation 25 May 1972: *Gaz.* 25 May 1972, p. 2031.

<sup>4</sup> Came into operation 29 March 1982: *Gaz.* 25 March 1982, p. 864.

<sup>5</sup> Came into operation 19 August 1985: *Gaz.* 8 August 1985, p. 334.

<sup>6</sup> Came into operation 7 July 1985: *Gaz.* 9 May 1985, p. 1398.

		“court of summary jurisdiction” means a court constituted of one or more justices having jurisdiction to try persons charged with offences punishable on summary conviction, including (but without limiting the meaning of this definition) cases where such jurisdiction exists only with the consent of the person charged:
Def. of “Director” inserted by 53, 1981, s. 3 (b); repealed by 51, 1982, s. 3 (a).	* * * * *	“justice” means a justice of the peace for the State of South Australia, and includes a magistrate:
Def. of “Minister” repealed by 53, 1981, s. 3 (c).	* * * * *	“offence” includes—
Para. (a) amended by 53, 1981, s. 3 (d).		(a) any indictable offence other than murder or treason;
		(b) any offence punishable on summary conviction:
Def. inserted by 51, 1982, s. 3 (b).		“the Permanent Head” means the person holding or acting in the office of permanent head of the Department of Correctional Services:
		“probationer” means any person with respect to whom a probation order is made:
Def. inserted by 53, 1981, s. 3 (e).		“probation hostel” means any premises declared to be a probation hostel under this Act:
Def. inserted by 53, 1981, s. 3 (e).		“probation officer” means an officer of the Department of Correctional Services holding, or acting in, the office of probation officer:
Def. amended by 53, 1981, s. 3 (f).		“probation order” means an order made under section 4 for the conditional discharge of an offender or for the conditional suspension of a sentence of imprisonment:
Def. amended by 19, 1963, s. 3 (b); 53, 1981, s. 3 (g).		“probative court” means any court before which a probationer is bound by his recognizance under this Act:
Def. of “this Act” repealed by 53, 1981, s. 3 (h).	* * * * *	
Def. inserted by 53, 1981, s. 3 (h).		“working day” means any day other than a Saturday, Sunday or public holiday.
S. 3 <sup>1</sup> .	* * * * *	
Provisions relating to administration.		<b>3a. (1)</b> The Minister may, by notice published in the <i>Gazette</i> , declare any premises to be—
S. 3a inserted by 53, 1981, s. 4.		(a) a community service centre;
		or
		(b) a probation hostel,
		for the purposes of this Act.
		(2) The Minister may, by further notice published in the <i>Gazette</i> , revoke or vary any declaration under this section.
		(3) The Minister may establish such other facilities as he thinks necessary or desirable for the proper administration of this Act.

<sup>1</sup> S. 3 omitted pursuant to the Acts Republication Act, 1967, s. 7 (2).

(4) All community service centres, probation hostels and other facilities established under this section shall be under the control of the Minister.

(5) The Minister shall promote the use of volunteers in the administration of this Act to such extent as he thinks appropriate.

3b. (1) The Permanent Head may, by instrument in writing, delegate to any officer of the Department of Correctional Services any of his powers, functions or duties under this Act.

Delegation by the Permanent Head. S. 3b inserted by 53, 1981, s. 4. Subsec. (1) amended by 51, 1982, s. 4 (a). Subsec. (2) amended by 51, 1982, s. 4 (b).

(2) A delegation under this section is revocable at will, and does not prevent the exercise or performance by the Permanent Head of any power, function or duty so delegated.

4. (1) Where a person is charged before a court of summary jurisdiction with an offence punishable by such a court and the court thinks that the charge is proved, but is of the opinion that, having regard to—

Conditional discharge of offenders. U.K. 7 Edw. 7. c. 17, s. 1. 401. 1887. s. 4. Subsec. (1) substituted by 15, 1953, s. 3 (1).

- (a) the character, antecedents, age, health or mental condition of the person charged;
- (b) the trivial nature of the offence;
- or
- (c) the extenuating circumstances under which the offence was committed,

it is expedient to exercise any of the powers conferred by this subsection, the court may—

- (d) without convicting the person, dismiss the information or complaint;
- (e) having convicted the person, discharge him without penalty;
- (f) without convicting, or having convicted, the person, discharge him upon condition that he enters into a recognizance, with or without sureties—
  - (i) to be of good behaviour;
  - and
  - (ii) to appear before a court of summary jurisdiction for conviction and sentence, or for sentence, if he fails, during the term of the recognizance, to observe any of its conditions.

Subpara. (ii) amended by 85, 1971, s. 3 (a).

(1a) Where, in relation to an offence with which he was charged, a probationer is bound by his recognizance under this Act to appear, when called upon, before a court of summary jurisdiction for conviction and sentence, or for sentence, as the case may be, he shall, for the purposes of this Act, be deemed to be bound to appear, when called upon, before any court of summary jurisdiction so constituted that the court would, as so constituted, have had jurisdiction to hear and determine in a summary way the charge in respect of that offence.

Subsec. (1a) inserted by 19, 1963, s. 4 (a).

(2) Where a person has been convicted, by a court other than a court of summary jurisdiction, of an offence punishable by imprisonment and the court is of the opinion that, having regard to—

Subsec. (2) amended by 19, 1963, s. 4 (b).

- (a) the character, antecedents, age, health or mental condition of the convicted person;

(b) the trivial nature of the offence;

or

(c) the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict any punishment, or any other than a nominal punishment, or it is expedient to release the convicted person on probation, the court may, instead of imposing a sentence of imprisonment, make an order discharging him upon condition that he enters into a recognizance, with or without sureties—

(d) to be of good behaviour;

and

(e) to appear before the Supreme Court or a judge of the Supreme Court, or before a District Criminal Court, as the case may require, for sentence, if he fails, during the term of the recognizance, to observe any of its conditions.

Para. (e) amended by 79, 1969, s. 4 (a); 85, 1971, s. 3 (b).

Subsec. (2a) inserted by 95, 1969, s. 2 (a); amended by 85, 1971, s. 3 (c).

(2a) Where a person has been convicted of an offence punishable by imprisonment and the court is of the opinion that, having regard to—

(a) the character, antecedents, age, health or mental condition of the convicted person;

(b) the trivial nature of the offence;

or

(c) any other extenuating circumstances,

it is expedient to exercise the powers conferred upon the court by this subsection, the court may impose a sentence of imprisonment upon the convicted person but suspend the sentence upon condition that the convicted person enters into, and observes the terms and conditions of, a recognizance to be of good behaviour for the term of the recognizance.

Subsec. (2b) inserted by 95, 1969, s. 2 (a).

(2b) If a person upon whom a suspended sentence of imprisonment has been imposed pursuant to subsection (2a) does not, during the term of the recognizance, fail to observe any term or condition of the recognizance, the sentence of imprisonment shall, at the expiration of that term, be wholly extinguished.

Subsec. (2c) inserted by 85, 1971, s. 3 (d); amended by 53, 1981, s. 5 (a).

(2c) Subject to subsection (2d), the term of a recognizance under this section shall be a term, not exceeding 3 years, fixed by the court.

Subsec. (2d) inserted by 53, 1981, s. 5 (b).

(2d) Where, pursuant to section 5, the court includes in a recognizance a condition requiring the probationer to undertake community service, the term of the recognizance fixed by the court shall not exceed 1 year.

Subsec. (3) amended by 19, 1963, s. 4 (c); 79, 1969, s. 4 (b); 95, 1969, s. 2 (b); 69, 1971, s. 6 (2) (Sched.).

(3) The court may, in addition to any order made under subsection (1), (2) or (2a), order the probationer to pay such damages for injury or compensation for loss (not exceeding, in the case of a court of summary jurisdiction, \$400 or, if a higher limit is fixed by any enactment relating to the offence, that higher limit), and such costs of the proceedings, as the court thinks reasonable.

Subsec. (4) amended by 69, 1971, s. 6 (2) (Sched.); 53, 1981, s. 5 (c).

(4) An order under subsection (3) may (unless a condition requiring compliance with the order has been included in a recognizance entered into by the probationer) be enforced by any justice in the same manner as orders for the payment of money made by justices upon summary conviction are

enforceable, and the court may, if it thinks fit, require the probationer to give security for the observance of the order and may make the discharge of the probationer conditional upon such security being given.

(5) Where an order is made under subsection (1) without conviction of the person charged, the order shall, for the purpose of revesting or restoring stolen property, or of enabling the court to make orders for the restitution or delivery of property to the owner and for the payment of money upon, or in connection with, such restitution or delivery, have the same effect as a conviction.

Subsec. (5)  
amended by 15,  
1953, s. 3 (2).

5. (1) A recognizance under section 4 may include such of the following conditions as the court thinks appropriate:

Probation orders  
and conditions of  
recognizance.  
U.K. 7 Edw. 7,  
c. 17, s. 2.  
Subsec. (1)  
amended by 25,  
1945, s. 3;  
substituted by 53,  
1981, s. 6 (a).

- (a) a condition requiring the probationer to be under the supervision of a probation officer for a specified period of time, and to obey the lawful directions of the probation officer;
- (b) a condition requiring the probationer to reside with a specified person or in a specified probation hostel or other specified place;
- (c) a condition requiring the probationer not to reside with a specified person or in a specified place or area;
- (d) a condition requiring the probationer to undergo medical or psychiatric treatment in accordance with the terms of the recognizance;
- (e) a condition requiring the probationer to undertake a specified number of hours of community service, being not less than 40 nor more than 240, and to obey the lawful directions of the community service officer to whom he is assigned;
- (f) a condition requiring the probationer to abstain from drugs of a specified class or from alcohol;
- (g) a condition requiring the probationer to comply with an order made by the court under section 4 (3);

or

(h) any other condition that the court thinks necessary or desirable.

(1a) A court shall not include in the same recognizance conditions under both subsection (1) (a) and (e).

Subsec. (1a)  
inserted by 53,  
1981, s. 6 (a).

(1b) A court shall not include in a recognizance a condition under subsection (1) (b) unless it is satisfied that accommodation for the probationer is available with the person, or at the probation hostel or other place, specified in the recognizance.

Subsec. (1b)  
inserted by 53,  
1981, s. 6 (a).

(1c) A court shall not include in a recognizance a condition under subsection (1) (d) unless it is satisfied that treatment of the nature specified in the recognizance has been recommended for the probationer by a legally qualified medical practitioner and is available to the probationer.

Subsec. (1c)  
inserted by 53,  
1981, s. 6 (a).

(1d) A court shall not include in a recognizance a condition under subsection (1) (e) unless it is satisfied, upon a report of a probation officer, that there is, or will be within a reasonable period of time, a placement for the probationer at a community service centre reasonably accessible to him and that the community service likely to be undertaken by the probationer is appropriate for him.

Subsec. (1d)  
inserted by 53,  
1981, s. 6 (a).

Subsec. (1e)  
inserted by 53,  
1981, s. 6 (a).

(1e) A court making a probation order shall not specify a number of hours of community service to be undertaken by a probationer who is already undertaking, or liable to undertake, community service pursuant to a previous recognizance, where the aggregate of that number and the number of hours specified in the previous recognizance would exceed 240.

Subsec. (2)  
amended by 19,  
1963, s. 5 (a); 53,  
1981, s. 6 (b).

(2) The court by which a probation order is made, or by which the conditions of a probationer's recognizance are varied, shall furnish the probationer with a notice in writing stating in simple language the conditions he is required to observe, and shall satisfy itself that the probationer understands those conditions, the nature of the requirements that may lawfully be made of him by virtue of those conditions and the implications of failing to comply with his recognizance.

Subsec. (3)  
amended by 19,  
1963, s. 5 (b).

(3) A court, upon making a probation order or an order varying the conditions of a probationer's recognizance, shall forthwith furnish the Minister with a copy of the order.

Condition relating  
to reporting to  
probation centre  
or community  
service centre  
within 2 working  
days.  
S. 5a inserted by  
53, 1981, s. 7.

5a. Where a court includes in a recognizance a condition requiring the probationer to be under the supervision of a probation officer or a condition requiring the probationer to undertake community service, the court shall also include in the recognizance a condition requiring the probationer to report to a specified place within 2 working days after the day on which the probation order is made, unless, within that period, the probationer receives a notice in accordance with section 6.

Special provisions  
relating to  
community  
service.  
S. 5b inserted by  
53, 1981, s. 7.

5b. (1) Where a court includes a condition in a recognizance requiring the probationer to undertake community service, the following provisions shall apply:

(a) the probationer shall be required to perform community service work for 8 hours each Saturday or on such other day as the community service officer to whom he is assigned may direct;

(b) the probationer shall be required to attend at a community service centre or other place for 2 hours in the evening of one working day in each week in accordance with the directions of the community service officer or on such other day or at such other time as the community service officer may direct;

(c) the probationer shall, during the 2 hour period referred to in paragraph (b), be required to undertake, or participate in, courses of instruction arranged by the Permanent Head;

and

(d) one hour of the 8 hour period referred to in paragraph (a) shall be allocated as a lunch break.

Para. (c) amended  
by 51, 1982,  
s. 5 (a).

(2) Notwithstanding subsection (1), a probationer shall not be required to perform community service work or attend a community service centre—

(a) at a time that would interfere with his gainful employment or with a course of training or instruction relating to, or likely to assist him in obtaining, gainful employment;

or

(b) at a time that would cause him to offend against a rule of a religion that he practises.

(3) A probationer is not entitled to any remuneration for community service work performed by him under his recognizance.

(4) Where the Permanent Head is of the opinion that a probationer has failed to obey a reasonable direction given to him by his community service officer in relation to his conduct or behaviour while undertaking community service, the Permanent Head may, instead of commencing proceedings for breach of recognizance, require the probationer, by notice in writing served personally upon him, to perform a number of additional hours of community service work during the term of his recognizance, and any such hours shall, for the purposes of this Act, be deemed to be hours that were specified by the court in the conditions of the recognizance.

Subsec. (4) amended by 51, 1982, s. 5 (b).

(5) The Permanent Head shall not exercise his powers under subsection (4) so as to require a probationer to work more than 24 additional hours of community service work during the term of his recognizance.

Subsec. (5) amended by 51, 1982, s. 5 (c).

(6) The Permanent Head may exercise his powers under subsection (4) notwithstanding that the limit of 240 hours specified in section 5 (1) (e) and (1e) would thereby be exceeded.

Subsec. (6) amended by 51, 1982, s. 5 (d).

(7) Where the Permanent Head is of the opinion that a probationer has failed to observe the condition of his recognizance requiring him to undertake community service, he may, by notice in writing served personally or by post upon the probationer, suspend the operation of that condition until the probative court has heard and determined proceedings for breach of the recognizance.

Subsec. (7) amended by 51, 1982, s. 5 (e).

5c. (1) The Minister shall provide insurance, upon such terms and conditions as he thinks fit, for probationers in respect of death or injury arising out of, or occurring in the course of, community service undertaken pursuant to recognizances.

Insurance cover to be provided by Minister.  
S. 5c inserted by 53, 1981, s. 7.

(2) The Minister shall provide insurance, upon such terms and conditions as he thinks fit, for persons appointed as voluntary supervisors of probationers undertaking community service pursuant to recognizances in respect of death or injury arising out of, or occurring in the course of, carrying out their duties as supervisors.

(3) The cost of providing insurance cover under this section shall be borne by the Crown.

5d. (1) The Minister shall establish a community service advisory committee consisting of not less than 3, nor more than 5, members, of whom—

Advisory committee and community service committees.  
S. 5d inserted by 53, 1981, s. 7.

(a) one shall be appointed by the Minister after consultation with the United Trades and Labor Council;

and

(b) one shall be a person nominated by the Permanent Head.

Para. (b) amended by 51, 1982, s. 6 (a).

(2) The members of the advisory committee shall hold office upon such terms and conditions as the Minister thinks fit.

(3) The functions of the advisory committee are—

(a) to formulate guidelines for the approval of projects and tasks suitable for community service under this Act;

and

(b) to perform such other functions as the Minister may direct.

(4) The Minister shall establish a community service committee for each community service centre.

(5) A community service committee shall consist of not less than 3, nor more than 5, members, of whom—

- (a) one shall be a magistrate;
- (b) one shall be appointed by the Minister after consultation with the United Trades and Labor Council;

and

- (c) one shall be a person nominated by the Permanent Head.

(6) The members of a community service committee shall hold office upon such terms and conditions as the Minister thinks fit.

(7) The functions of a community service committee are—

- (a) to approve, within the guidelines formulated by the community service advisory committee, the projects and tasks to be performed as community service work by probationers attending the community service centre in respect of which the committee was established;
- (b) to keep approved projects and tasks under regular review;
- (c) to monitor the performance of community service work by probationers attending the centre;

and

- (d) to perform such other functions as the Minister may direct.

(8) A community service committee shall not approve a project or task for community service unless—

- (a) it is a project or task for the benefit of an organization that does not seek to secure a pecuniary profit for its members;
- (b) it is a project or task to aid a person, or group of persons, who, in the opinion of the committee, is or are disadvantaged through age, illness, incapacity, poverty or any other adversity;

or

- (c) it is a project or task of a Government department or instrumentality or of a local government authority.

(9) A community service committee shall not approve a project or task for community service work if a probationer, in undertaking that project or task—

- (a) would replace a person who is being paid to perform any work;

or

- (b) would perform any work for which funds are available.

Para. (c) amended by 51, 1982, s. 6(b).

Minister shall assign a probation officer or community service officer to each probationer. U.K. 7 Edw. 7, c. 17, ss. 3, 4. S. 6 substituted by 53, 1981, s. 8.

6. (1) The Minister shall, upon receipt of a copy of a probation order, and may thereafter from time to time, assign the probationer to a probation officer for supervision or to a community service officer for community service, as the case may require.

(2) The Minister shall cause the probationer to be notified in writing of the name of the probation officer or community service officer to whom he has been assigned and of the place and time at which he must first report to that officer.

(3) It is the duty of each probation officer and community service officer to use his best endeavours to ensure that any probationer assigned to him complies with the conditions of his recognizance.

7. (1) A probation officer to whom a probationer has been assigned for supervision may give reasonable directions to the probationer in relation to the following matters:

Probation officer or community service officer may give reasonable directions to probationers. S. 7 substituted by 53, 1981, s. 8.

- (a) requiring the probationer to report to him on a regular basis;
- (b) requiring the probationer to notify him of any change in his place of residence or in his employment;
- (c) requiring the probationer to obtain his written permission before leaving the State for any reason;
- (d) requiring the probationer to reside, or not to reside, in any place or area or with any person;
- (e) requiring the probationer to take up, or not to take up, any particular employment, not to give up his employment or to be punctual in reporting to work;

or

- (f) any other matter (whether pertaining to supervision or any other condition of the recognizance) authorized by the Minister, either generally or in respect of a particular case.

(2) A community service officer to whom a probationer has been assigned for community service may give reasonable directions to the probationer in relation to the following matters:

- (a) requiring the probationer to report to a community service centre or other place at certain times;
- (b) requiring the probationer to notify him of any change in his place of residence or in his employment;
- (c) requiring the probationer to obtain his written permission before leaving the State for any reason;
- (d) requiring the probationer to perform certain projects or tasks for his community service work;
- (e) requiring the probationer to undertake, or participate in, courses of instruction at a community service centre or other place;
- (f) requiring the probationer to conduct himself or behave in a particular manner while undertaking community service;

or

- (g) any other matter (whether pertaining to community service or any other condition of the recognizance) authorized by the Minister, either generally or in respect of a particular case.

7a. (1) If a member of the police force has observed, or has received a report, that a probationer has broken, or failed to observe, any condition of his recognizance, that member shall forthwith take such action as is proper to ensure that the facts so observed or reported are reported to the Permanent Head.

Duty of members of the police force. S. 7a inserted by 29, 1951, s. 3. Subsec. (1) amended by 53, 1981, s. 9 (a), (b); 51, 1982, s. 7.

(2) The fact that a report has not been made under this section shall in no way affect the liability of any person under a recognizance.

Power to revoke or vary a condition of a recognizance or to discharge recognizance.  
S. 8 substituted by 19, 1963, s. 6.

8. (1) A probative court may—

(a) on application by the Minister or a person authorized by him in that behalf or on the application of the probationer concerned, by order, revoke or vary any condition of a probationer's recognizance;

or

(b) on application by a probationer and on being satisfied that the probationer's conduct has been such as to make it unnecessary that he should be subject to a recognizance any longer, by order, discharge the recognizance.

Para. (a) amended by 53, 1981, s. 10 (a).

Para. (b) amended by 53, 1981, s. 10 (b).

(2) No order shall be made under subsection (1) unless—

(a) in the case of an application by the Minister or a person authorized by him in that behalf, the probationer has received reasonable notice of the application and has been given a reasonable opportunity, in person or by counsel or solicitor, of calling such evidence and making such representations to the court as the court considers relevant to the application;

or

(b) in the case of an application by the probationer, the Minister has received reasonable notice of the application and the Minister, or a person authorized by him in that behalf, has been given a reasonable opportunity of calling such evidence and making such representations to the court as the court considers relevant to the application.

Subsec. (3) inserted by 53, 1981, s. 10 (c).

(3) Where the Minister is satisfied that the conduct of a probationer under supervision has been such as to make it unnecessary that he should be under supervision any longer and that it would not be in the best interests of the probationer for him to remain under supervision, the Minister may, by instrument in writing, waive the obligation of the probationer to comply any further with the condition of his recognizance requiring him to be subject to supervision.

Action that may be taken where probationer fails to observe conditions of recognizance.  
S. 9 substituted by 19, 1963, s. 7.

9. (1) If a court is satisfied, by complaint or information on oath, that a probationer has failed to observe any of the conditions of his recognizance, the court may—

(a) issue a warrant for the probationer's apprehension;

or

(b) if it thinks fit, issue a summons or summonses to the probationer or to the probationer and his sureties, if any, as the case may be, requiring him or requiring him and them, as the case requires, to attend at such place and at such time as is specified in the summons or summonses.

(2) The probationer, when apprehended, shall, if not brought forthwith before a probative court, be brought forthwith before a court of summary jurisdiction.

(3) The court before which a probationer is brought on apprehension or before which a probationer appears in answer to the summons may, if it is not a probative court, remand him in custody or on bail until he can be brought before a probative court.

(4) A probative court, on being satisfied that a probationer has failed to observe any condition of his recognizance, may estreat the recognizance in such amount as the court thinks fit and—

Subsec. (4) substituted by 95, 1969, s. 3; amended by 53, 1981, s. 11 (a).

(a) if the probationer has not been sentenced for the original offence, may forthwith, without further proof of his guilt, sentence him for that offence or, if he has not already been convicted of the offence, convict and sentence him for that offence;

or

(b) if the probationer has been sentenced for the original offence and the sentence has been suspended, shall, subject to subsection (5), forthwith order that the suspension be revoked and the sentence carried into effect.

Para. (b) amended by 53, 1981, s. 11 (b).

(5) Where a probationer is subject to a suspended sentence and the probative court is satisfied that the failure of the probationer to observe the conditions of his recognizance is trivial or that there are proper grounds upon which the failure should be excused, the court—

Subsec. (5) amended by 79, 1969, s. 5; repealed by 69, 1971, s. 6 (2) (Sch.); inserted by 53, 1981, s. 11 (c).

(a) may refrain from ordering that the sentence be carried into effect; and

(b) may extend the term of the recognizance by a period not exceeding one year.

(6) Where a probative court orders that a suspended sentence be carried into effect, the court—

Subsec. (6) inserted by 53, 1981, s. 11 (c).

(a) may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the suspended sentence;

(b) may direct that time spent by the probationer in custody pending determination of the proceedings for breach of recognizance be counted as part of the term of the suspended sentence;

or

(c) may direct that the suspended sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the probationer.

(7) Notwithstanding the provisions of this section, where a probationer is found guilty of an offence by a court of a superior jurisdiction to that of the probative court, that first mentioned court may hear and determine the proceedings for breach of recognizance and, subject to subsection (8), shall for that purpose have all the powers of a probative court under this section.

Subsec. (7) inserted by 53, 1981, s. 11 (c).

(8) Where, pursuant to subsection (7), a court sentences a probationer for the original offence, the court may not impose any sentence that the probative court could not have imposed.

Subsec. (8) inserted by 53, 1981, s. 11 (c).

(9) Any amount payable upon estreatment of a recognizance shall be recoverable as a fine.

Subsec. (9) inserted by 53, 1981, s. 11 (c).

Subsec. (10) inserted by 53, 1981, s. 11 (c).

(10) In this section—

“court of a superior jurisdiction” means—

- (a) where the probative court is a court of summary jurisdiction—the Supreme Court or a District Criminal Court;
- and
- (b) where the probative court is a District Criminal Court—the Supreme Court.

Proof of probation order or recognizance. S. 9a inserted by 6, 1985, s. 6.

9a. An apparently genuine document purporting to be a probation order or a recognizance under this Act, or a copy of such an order or recognizance, shall be accepted in any court as evidence of the order or recognizance and of its terms and conditions.

Regulations.

10. The Governor may make any regulations which may be necessary or convenient for carrying out, or giving effect to, the provisions or objects of this Act, including regulations prescribing such matters as are incidental to—

Para. (a) repealed by 53, 1981, s. 12 (a).

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- (b) the duties of probation officers;
- (c) the reports of probation officers to the Minister.

Subsecs. (2)-(4) repealed by 53, 1981, s. 12 (b).

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Immunity from liability. S. 11 amended by 2168, 1934, s. 4 (2nd Sched.); 19, 1963, s. 8; repealed by 69, 1971, s. 6 (2) (Sched.); inserted by 53, 1981, s. 13.

11. (1) No civil liability shall attach to a probation officer or community service officer for any act or omission by him in good faith and in the exercise of his powers, or the discharge of his duties, under this Act.

(2) A liability that would, but for subsection (1), attach to a probation officer or community service officer shall attach to the Crown.

Preservation of powers conferred by other Acts or laws.

12. Nothing in this Act shall be construed as taking away or in any way derogating from, or diminishing, any power or jurisdiction conferred by any other Act or law upon any court or any person acting judicially.