

THE PROBATION OF OFFENDERS (AMENDMENT) BILL
(No. VIII of 2009)

Explanatory Memorandum

The object of this Bill is to amend the Probation of Offenders Act in order to allow a Court to deal more efficiently with probationers, namely by imposing an attendance centre requirement, a curfew requirement, a drug or alcohol treatment requirement and a residence requirement.

S. BAPPOO

*Minister of Social Security, National Solidarity
and Senior Citizens Welfare
& Reform Institutions*

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Probation of Offenders Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Probation of Offenders (Amendment) Act 2009.

2. Interpretation

In this Act –

“principal Act” means the Probation of Offenders Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “Principal Probation Officer”;
- (b) in the definition of “probation officer”, by deleting the words “section 16(1)(b)” and replacing them by the words “section 16(1)”;
- (c) in the definition of “probation order”, by inserting, after the words “probation officer”, the words “and in the form set out in the Schedule”;
- (d) in the definition of “probationer”, by deleting the full stop and replacing it by a semi-colon;
- (e) by inserting, in the appropriate alphabetical order, the following new definitions –

“attendance centre requirement” means a requirement for a probationer to attend a centre;

“attendance centre” means a centre designated as such by the Commissioner;

“Commissioner” means the Commissioner of the Mauritius Probation and Aftercare Service;

“curfew requirement” means a requirement for a probationer to remain indoors on specified days and hours at a place designated under section 4(3)(b);

“drug or alcohol treatment requirement” means a requirement for a probationer to follow a treatment;

“guardian”, in relation to a minor, includes a person who has for the time being the charge of, or control over, the minor;

“institution”, in relation to a minor, means –

- (a) the Probation Hostel for Boys;
- (b) the Probation Home for Girls; or
- (c) any other institution run by the Mauritius Probation and Aftercare Service;

“Minister” means the Minister to whom responsibility for the subject of probation and aftercare service is assigned;

“minor” means a person who is under the age of 18;

“residence requirement” means a requirement for a probationer to reside in an institution.

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended in subsection (1)(a), by inserting, after the words “is of opinion that”, the words “, after duly considering any report made under section 3A and”.

5. Section 3A of principal Act amended

Section 3A of the principal Act is amended in subsection (2), by deleting the words “under the age of 17” and replacing them by the words “a minor”.

6. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) in paragraph (b)(i), by deleting the word “provisions” and replacing it by the words “conditions and requirements”;

- (ii) in paragraph (b)(ii), by deleting the words “such additional conditions as to residence and other matters” and replacing them by the words “such other conditions and requirements”;
- (iii) by adding, after paragraph (b), the following new paragraph –
 - (c) (i) Subject to subparagraph (ii), in making a probation order, a Court may impose one or more of the following requirements –
 - (A) an attendance centre requirement;
 - (B) a curfew requirement;
 - (C) a drug or alcohol treatment requirement;
 - (D) a residence requirement.
 - (ii) A curfew and a residence requirement shall be imposed in respect of a minor only.
- (b) by repealing subsections (2) and (3) and replacing them by the following subsections –
 - (2) (a) Where a probation order contains an attendance centre requirement, the centre where, and the period during which, a probationer is required to attend shall be specified in the probation order.
 - (b) Where a requirement under paragraph (a) requires a probationer to attend a centre –
 - (i) the period during which the probationer is required to attend shall not exceed 60 hours; and
 - (ii) the probationer shall not be required to attend more than 3 hours a day.
 - (3) (a) Subject to paragraphs (b) and (c), where a probation order contains a curfew requirement, the place where, and the days on and the hours between which, a probationer is required to remain indoors shall be specified in the probation order.

(b) The place where a probationer is required to remain indoors shall be designated by the Commissioner and shall not include an institution.

(c) The days on and the hours between which a probationer is required to remain indoors shall not span over a period of more than 6 months as from the date of a probation order.

(d) A curfew requirement shall, as far as practicable, not interfere with the normal working hours, school hours or educational activity, as the case may be, of a probationer.

(e) A Court shall, before imposing a curfew requirement, obtain and consider information about the place proposed to be specified in the probation order, including information from any person likely to be affected by the presence of the offender.

(4) (a) Where a Court –

(i) convicts a person under section 34(1) of the Dangerous Drugs Act; or

(ii) is satisfied that an offender is dependent on drug or alcohol,

the Court may impose on him a drug or alcohol treatment requirement.

(b) A Court shall not make a drug or alcohol treatment requirement unless it is satisfied that necessary arrangements have been made for such treatment to be followed.

(5) (a) Where a probation order contains a residence requirement, the institution where, and the period during which, a probationer is required to reside shall be specified in the probation order.

(b) Subject to paragraph (c), where a requirement under paragraph (a) requires a probationer to reside in an institution, the period during which the probationer is required to reside shall not span over a period of more than 12 months as from the date of a probation order.

(c) A Court may, in exceptional circumstances, extend the period of 12 months specified in paragraph (b).

(6) A Court making a probation order shall give one copy of the order to the offender and one to the probation officer under whose supervision he is placed.

7. Section 5 of principal Act amended

Section 5 of the principal Act is amended in subsection (1) –

- (a) by inserting, after the word “loss”, the words “, resulting from the commission of the offence,”; and
- (b) by deleting the figure “2,000” and replacing it by the figure “50,000”.

8. Section 7 of principal Act amended

Section 7 of the principal Act is amended –

- (a) in subsection (1)(a), by deleting the word “provision” and replacing it by the words “condition or requirement”;
- (b) in subsection (3) –
 - (i) in paragraph (a), by deleting the word “provision” and replacing it by the words “condition or requirement”;
 - (ii) in paragraph (a)(i), by deleting the figure “100” and replacing it by the figure “10,000”.

9. Section 9 of principal Act amended

Section 9 of the principal Act is amended, in subsection (2), by inserting after the word “condition”, the words “or requirement”.

10. Section 11 of principal Act amended

Section 11 of the principal Act is amended –

- (a) by repealing subsection (3);
- (b) in subsection (4), by repealing paragraph (a) and replacing it by the following paragraph –

(a) An order under this section cancelling a condition or requirement of a probation order may be made without summoning the probationer.

11. Section 14 of principal Act repealed

Section 14 of the principal Act is repealed.

12. Section 15 of principal Act amended

Section 15 of the principal Act is amended by deleting the words “homes” and “President” and replacing them by the words “institutions” and “Minister”, respectively.

13. Section 16 of principal Act repealed and replaced

Section 16 of the principal Act is repealed and replaced by the following section –

16. Appointments

(1) The Public Service Commission shall appoint a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as may be prescribed.

(2) The Minister may appoint such Probation Committees as he thinks fit to –

- (a) review the progress of probationers and supervise the work of probation officers; and
- (b) perform such other duties as may be necessary in connection with probation.

14. Section 17 of principal Act repealed and replaced

Section 17 of the principal Act is repealed and replaced by the following section –

17. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations may provide for –

- (a) the composition, powers and duties of a Probation Committee;
- (b) the powers and duties of probation officers;
- (c) the allowance payable to any person, other than a public officer, required to carry out any duties under this Act;
- (d) the levying of fees and charges; and
- (e) the amendment of the Schedule.

15. Schedule added to principal Act

The principal Act is amended by adding the Schedule to this Act as a Schedule to the principal Act.

16. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.

SCHEDULE

[Section 15]

SCHEDULE

[Section 2]

PROBATION ORDER

District Court of/Intermediate Court/ Supreme Court*

TAKE NOTICE that you are bound for the period of by the promise of good behaviour made this day before the said Court in accordance with the conditions and requirements of this Order. If you fail to observe any of the conditions or requirements of this Order, you shall be apprehended and brought before this Court, and to be convicted and sentenced for the offence which was, this day, proved against you.

CONDITIONS

1. That you be of good behaviour and appear before this Court for conviction and sentence when called upon to do so.
2. That you do not associate yourself with bad company.
3. That you lead an honest and industrious life.
4. That you abstain from intoxicating liquor and illicit drugs.
5. That you reside at (address)
6. That you be under the supervision of, a probation officer, or any other officer designated by the Commissioner of the Mauritius Probation and Aftercare Service, and observe the following conditions for securing such supervision –
 - (a) that you receive in your own home visits from the probation officer at such intervals as the probation officer thinks fit; and if so required by the probation officer, attend your home and elsewhere for the purpose of such visits at times fixed by the probation officer and answer truly all questions put to you by the probation officer with regard to your conduct, employment or residence; and
 - (b) that you report forthwith to the probation officer any change of your residence or place of employment.

REQUIREMENTS

That, furthermore, you are required to –

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Given under my hand and seal of the Court on this day and year
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Magistrate/Judge*
District Court of/Intermediate Court/Supreme Court*

*Delete as appropriate