

CHAPTER 108 - PROBATION OF OFFENDERS

A LAW TO PROVIDE FOR THE PROBATION OF OFFENDERS

[3 *October* 1957]

1. This Law may be cited as the Probation of Offenders Law.

2. (1) In this Law:—

"Commissioner" means the State Commissioner for the time being responsible for the probation of offenders;

"court" does not include a court-martial;

"functions" includes powers and duties;

"order for conditional discharge" means an order made under the provisions of section 8 discharging a person subject to condition;

"period of conditional discharge" means the period specified in an order for conditional discharge;

"principal Probation Officer" means the person appointed to be the Principal Probation Officer under section 3;

"probation committee" means a group of persons appointed to carry out the duties prescribed by or under section 4;

"probation officer" means a person appointed to be a probation officer under section 3;

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

"probationer" means a person for the time being under supervision by virtue of a probation order.

(2) The powers conferred by this Law upon a court shall not be exercised by an Area Court until the Governor shall, by order made under any legislation relating to Area Courts, have conferred jurisdiction for the purposes of this Law on such an Area Court.

(3) Where jurisdiction has been conferred upon an Area Court for the purposes of this Law, such Area Court shall, in respect of persons who are subject to the jurisdiction of an Area Court, have the functions of a magistrate or magistrate's court for the purposes of sections 7 and 9.

3.—(1) The Civil Service Commission may appoint a Principal Probation Officer and such number of probation officers as may be necessary for the purposes of this Law.

(2) The Principal Probation Officer shall have and shall be entitled to exercise all the powers of a probation officer in addition to the powers vested in him by virtue of this Law or any regulations made under section 12.

(3) All persons appointed under the provisions of this section shall be deemed to be public servants within the meaning of the Penal Code.

4. The Commissioner may appoint a probation committee or committees consisting of such persons as he shall think fit, who shall review the work of probation officers in individual cases, and perform such other duties in connection with probation as may be prescribed by regulations made under section 12.

5.—(1) Where a person is convicted of an offence (not being an offence the sentence for which is fixed by law) and the court by which he is convicted is of the opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to make a probation order, the court may, instead of sentencing such person, make a probation order.

(2) A probation order:—

(a) shall require an offender to be under the supervision of a probation officer for such period, not being less than twelve months nor more than three years, as may be specified in the order; and

(b) may also require the offender 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 power of the court to make an order under subsection

(2) of section 10) the payment of sums by way of damages for injury or compensation for loss shall not be included among the requirements of a probation officer.

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

Provided that before making an order containing any such requirements, the court shall consider the home surroundings of the offender.

(4) Before making a probation order, the court shall explain to the offender in ordinary language:-

(a) The effect of the order (including any additional requirements proposed to be inserted therein under subsection (2) or (3)); and

(b) That if he fails to comply therewith or commits another offence he will be liable to be sentenced for the original offence.

(5) If the offender is not less than fourteen years of age the court shall not make probation order unless he expresses his willingness to comply with the requirements thereof.

(6) 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.

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

(8) The court by which a probation order is made shall forthwith transmit a sufficient number of copies of the order to the Principal Probation Officer, who shall transmit a copy to:-

(a) The probationer; and

(b) The probation officer responsible for the supervision of the offender.

6.(1) The court by which a probation order was made may upon the application of the probation officer or the probationer discharge the order.

(2) A court may, upon the application of the probation officer or the probationer by order amend a probation order:—

(a) by cancelling any of the requirements thereof; or

(b) by inserting therein (either in addition to or in substitution for any original requirement) any requirement which could be included in the order if it were then being made by that court in accordance with the provisions of section 5.

Provided that the court shall not amend a probation order by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order.

(3) Where the court proposes to amend a probation order under this section, otherwise than on the application of the probationer, it shall summon him to appear before the court, and if the probationer is not less than fourteen 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 so 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.

(4) On the making of an order discharging or amending a probation order, the court shall forthwith transmit a sufficient number of copies of the discharging or amending order to the Principal Probation Officer who shall transmit a copy to:—

(a) the probationer; and

(b) the probation officer responsible for the supervision of the probationer.

(5) Where a probation order, whether as originally made or as amended under subsection (2) includes requirements relating to the residence of the probationer for a period extending beyond six months from the date of the order as originally made or of the amending order, as the case may be, the probation officer shall, as soon as may be after the expiration of six months from the date of such order, make a report to the court on the case.

(6) On receipt of any such report, the court:—

(a) shall review the probation order for the purpose of considering whether the requirement as to residence should be revoked or the period thereof reduced; and

(b) may, if it thinks fit, amend the order accordingly without the necessity for any application

in that behalf.

(7) Where under the provisions of this Law a probationer is sentenced for the offence for which he was previously placed on probation, the probation order shall cease to have effect.

7.—(1) If at any time during the probation period it appears to a magistrate that a probationer has failed to comply with any of the requirements of a probation order the magistrate may issue a summons requiring the probationer to appear before a magistrate's court.

(2) If it is proved to the satisfaction of the magistrate's court before which a probationer appears or is brought under the provisions of this section that the probationer has failed to comply with any requirement of the probation order by which he is affected the court may, without prejudice to the continuance of the probation order, impose on him a fine not exceeding twenty naira, or may:—

(a) if the probation order was made by a magistrate's court, deal with the probationer for the offence in respect of which the probation order was made in any manner in which the court could deal with him if it had just convicted him of the offence;

(b) if the probation order was made by the High Court, commit him to custody or release on bail (with or without sureties) until he can be brought or appear before the High Court.

(3) Where the magistrate's court deals with the case as provided in paragraph (b) of subsection (2) then:—

(a) the court shall send to the High Court a certificate signed by the magistrate certifying that the probationer has failed to comply with such of the requirements of the probation order as may be specified in the certificate, together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the High Court; and

(b) where the probationer is brought or appears before the High Court, and it is proved to the satisfaction of that court that he has failed to comply with any of the requirements of the probation order, that court may deal with him for the offence in respect of which the probation order was made, in any manner in which the court could deal with him if he had just been convicted before that court of that offence.

8.—(1) Where a person is convicted of an offence (not being an offence the sentence for which

is fixed by law) and the court by which he is convicted is of the opinion that, having regard to the circumstances including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment or to make a probation order, the court may make an order discharging the offender absolutely, or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period not exceeding twelve months from the date of the order as may be specified therein.

(2) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.

(3) Where under the provisions of this Law a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.

9.—(1) If it appears to a judge or magistrate having jurisdiction under the provisions of subsection (3) that a probationer or a person in respect of whom an order for conditional discharge has been made has been convicted by any court in Nigeria of an offence committed during the probation period or during the period of conditional discharge and has been dealt with in respect of that offence the judge or magistrate, as the case may be, may issue a summons requiring that person 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 warrant except on information in writing and on oath.

(2) A summons or warrant issued under subsection (1) shall direct the person so convicted to appear or be brought before the court by which the probation order was made.

(3) The following persons shall have jurisdiction for the purposes of subsection (1).—

(a) if the probation order or the order for conditional discharge was made by the High Court, a judge of the High Court;

(b) if such order was made by a magistrate's court, a magistrate.

(4) If a person in respect of whom a probation order or an order for conditional discharge has been made by the High Court is convicted and dealt with by any magistrate's court or area

court in respect of an offence committed during the probation period or during the period of conditional discharge the magistrate's court or area court may commit him to custody or release him on bail (with or without sureties) until he can be brought or appear before the High Court, and if it does so the magistrate's or area court shall send to the High Court a copy of the minute or memorandum of the conviction entered in the records duly signed by the magistrate or area court judge.

(5) Where it is proved to the satisfaction of the court by which a probation order or an order for conditional discharge was made that the person in respect of whom such order was made has been convicted and dealt with in respect of an offence committed during the probation period or during the period of conditional discharge, as the case may be, that court may deal with him for the offence for which such order was made in any matter in which that court could deal with him if he had just been convicted by or before that court of that offence.

(6) If a person in respect of whom a probation order or an order for conditional discharge has been made by a magistrate's court is convicted before the High Court or another magistrate's court or area court of an offence committed during the probation period or during the period of conditional discharge, the High Court or such other magistrate's court or area court may deal with him for the offence for which the order was made in any manner in which the magistrate's court by which the order was made could deal with him if it had just convicted him of that offence.

10.—(1) Any court may, on making a probation order or an order for conditional discharge under this Law if it thinks it expedient for the purpose of the reformation of the offender, allow any person who consents to do so to give security for the good behavior of the offender.

(2) A court, on making a probation order or an order for conditional discharge or on discharging an offender absolutely under this Law may, within the limits of its civil jurisdiction order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable.

(3) An order for damages or compensation under subsection (2) may be made without prejudice to the power of the court to award costs against an offender and 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.

(4) In any proceedings before the High Court under the foregoing provisions of this Law, any question whether a probationer has failed to comply with the requirements of the probation order or has been convicted of an offence committed during the probation period and any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge, shall be determined by the Court and not by the verdict of a jury.

(5) When a court makes any order under the provisions of this section, then if the offender:—

(a) is under fourteen years of age, such order shall be enforced against the parent or guardian of the offender;

(b) is under sixteen years of age, such order may be enforced either against the parent or guardian of the offender or against the offender as to the court may seem just in any particular case,

unless the parent or guardian of the offender satisfies the court that he has not conduced to the commission of the offence by neglecting to exercise due care of the offender.

11.—(1) Subject as hereinafter provided, a conviction of an offence for which an order is made under this Law placing the offender on probation or discharging him absolutely or conditionally 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 provisions of this Law:

Provided that where an offender, being not less than sixteen years of age at the time of his conviction of an offence for which he is placed on probation or conditionally discharged as aforesaid, is subsequently sentenced under this Law for that offence, 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 or discharged absolutely or conditionally as aforesaid shall in any event be disregarded for the purposes of any written law which imposes any disqualifications or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability.

(3) The provisions of this section shall not affect:-

(a) any right of any offender to appeal against his conviction, or to rely thereon in bar of any subsequent proceedings for the same offence;

(b) the revising or restoration of any property in consequence of any order made on the conviction of any offender.