

PROBATION SERVICES ACT 116 OF 1991

(Afrikaans text signed by the State President)

[Assented To: 27 June 1991]

[Commencement Date: 29 April 1994]

as amended by:

Health and Welfare Matters Amendment Act 118 of 1993

Welfare Laws Amendment Act 106 of 1996

Probation Services Amendment Act 35 of 2002

ACT

To provide for the establishment and implementation of programmes aimed at the combating of crime; for the rendering of assistance to and treatment of certain persons involved in crime; and for matters connected therewith.

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1. Definitions

In this Act, unless the context otherwise indicates -

“assessment” means a process of developmental assessment or evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor;

[Definition of “assessment” inserted by s. 1 of Act 35/2002]

“assistant probation officer” means a person appointed under [section 4A](#) and who assists and works under the supervision of a probation officer;

[Definition of “assistant probation officer” inserted by s. 1 of Act 35/2002]

“authorized probation officer” means a probation officer authorized or directed by the Minister to perform any function entrusted to an authorized probation officer under this Act;

“child” means any person under the age of 18 years;

[Definition of “child” inserted by s. 1 of Act 35/2002]

“Commissioner” means the Commissioner of Correctional Services appointed under section 4 (1) of the Correctional Services Act, 1959 (Act No. 8 of 1959);

“committee” means a pre-sentence evaluation committee established under [section 5](#);

“department” means the department of the Minister concerned;

“Director-General” means the Director-General of the department in question;

“diversion” means diversion from the formal court procedure with or without conditions;

[Definition of “diversion” inserted by s. 1 of Act 35/2002]

“diversion programme” means a programme within the context of the family and community-

(a) in respect of a person who is alleged to have committed an offence; and

(b) which is aimed at keeping that person away from the formal court procedure;

[Definition of “diversion programme” inserted by s. 1 of Act 35/2002]

“early intervention” means the provision of services, diversion programmes and other programmes aimed at preventing the need for a person who is alleged to have committed an offence to be dealt with in terms of the formal court procedure;

[Definition of “early intervention” inserted by s. 1 of Act 35/2002]

“family finder” means a person appointed under [section 9](#) and includes an assistant probation officer;

[Definition of “family finder” inserted by s. 1 of Act 35/2002]

“family group conferencing” means a gathering convened by a probation officer as a diversion or sentencing option to devise a restorative justice response to the offence;

[Definition of “family group conferencing” inserted by s. 1 of Act 35/2002]

“family member” means a person who is related to another person biologically, by law or according to customary law;

[Definition of “family member” inserted by s. 1 of Act 35/2002]

“home-based supervision” means supervision under certain conditions where an arrested, accused, convicted or sentenced child in the care of his or her parents or guardian or in the

custody of any other person, is monitored by an assistant probation officer;
 [Definition of “home-based supervision” inserted by s. 1 of Act 35/2002]

“**information class**” means an information class established under [section 8](#);

“**Minister**” means the Minister concerned by virtue of a proclamation under [section 17](#);

“**prescribe**” means prescribe by regulation;

“**probationer**” means a person who has been placed under the supervision of a probation officer by virtue of the provisions of any law;

“**probation officer**” means a person who complies with the prescribed requirements, and who has been appointed under [section 2](#);

“**regulation**” means any regulation made under this Act;

“**restorative justice**” means the promotion of reconciliation, restitution and responsibility through the involvement of a child, and the child’s parents, family members, victims and the communities concerned;

[Definition of “restorative justice” inserted by s. 1 of Act 35/2002]

“**shelter**” means an institution where shelter is temporarily provided for, and aftercare is temporarily rendered to -

- (a) (i) persons who have been released from prison;
- (ii) persons who are subject to supervision; and
- (iii) persons at whom a programme referred to in [section 3](#) is aimed,

and who have no lodging or refuge immediately after such release or during such supervision or the implementation of such programme;

- (b) families of persons referred to in paragraph (a);

“**supervision**” means supervision of an accused, convicted or sentenced person by a probation officer in terms of the provisions of any law;

[Definition of “supervision” substituted by s. 1 of Act 35/2002]

“**this Act**” includes the regulations;

“**volunteer**” means any person appointed under [section 9](#).

2. Appointment of probation officers

- (1) The Minister may appoint as many persons as he may deem necessary as probation officers to exercise the powers and to perform the duties conferred or imposed by or under this Act or any other law on a probation officer.
- (2) A probation officer shall be an officer of every court established under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).
- (3) Any person appointed as a probation officer under the Children’s Act, 1960 (Act No. 33 of 1960), or the Probation Services Act (House of Assembly), 1986 (Act No. 98 of

1986), shall be deemed to have been appointed as a probation officer under this Act.

[Sub-s. (3) substituted by s. 12 of Act 118/93]

- (4) The requirements to be complied with by persons for appointment as probation officers shall be prescribed.
- (5) (a) The Minister may classify probation officers for different purposes in different categories.
- (b) Different regulations may be made in respect of different categories of probation officers.

3. Programmes for the combating of crime and the rendering of probation services

The Minister may, in respect of different categories of persons, establish or cause to be established programmes or services which are aimed at -

- (a) the prevention and combating of crime;
[Para. (a) substituted by s. 2 of Act 35/2002]
- (b) the performance of community service;
- (c) information to and the treatment of offenders and other persons;
- (d) the assessment, care, treatment, support, referral for and provision of mediation in respect of the victims of crime;
[Para. (d) substituted by s. 2 of Act 35/2002]
- (e) the observation, treatment and supervision of persons who have been released from a prison or a reform school, and who are probationers or who have been placed in the custody of any person in terms of any law;
- (f) the rendering of assistance to the families of persons detained in a prison or reform school and the families of persons referred to in paragraph (e);
- (g) the establishment, financing and registration of shelters;
- (h) the compensating of victims of crime;
- (i) the adaptation of persons referred to in paragraph (e) to the community and their families;
- (j) generally, matters which the Minister considers necessary or expedient for the combating of crime;
- (k) early intervention, including family group conferencing; and
[Para. (k) added by s. 2 of Act 35/2002]
- (l) restorative justice as part of appropriate sentencing and diversion options.
[Para. (l) added by s. 2 of Act 35/2002]
[S. 3 amended by s. 2 of Act 35/2002]

3A. Treatment of probationers

- (1) Notwithstanding any probation condition imposed by a court, the Director-General may determine and impose further conditions which shall apply in respect of a probationer as

part of his probation conditions.

- (2) A further condition may include participation in a rehabilitation or other programme as determined in terms of or prescribed under section 84 (1) of the Correctional Services Act, 1959 (Act No. 8 of 1959).
- (3) A further condition referred to in subsection (2) shall only be imposed with the concurrence of the Commissioner of Correctional Services.
- (4) A probationer who feels aggrieved by the imposition of a further condition may in writing object against the imposition of such condition to the Minister.
- (5) The Minister may, after considering an objection referred to in subsection (4) and the further information that he may gather in his discretion, revoke or amend the condition concerned, or substitute another condition for that condition.
- (6) For the purposes of this section “further condition” means a condition imposed in terms of subsection (1).

[S. 3A inserted by s. 13 of Act 118/93]

4. Powers and duties of probation officers

- (1) The powers and duties of probation officers shall include -
 - (a) the investigation of the circumstances of an accused with a view to reporting to the court on his treatment and committal to an institution, as well as the rendering of assistance to his family;
 - (b) the rendering of assistance to a probationer in complying with his probation conditions in order to improve his social functioning;
 - (c) the immediate reporting to the court or to the Commissioner when a probationer does not in any manner comply with or in any manner deviates from his probation conditions;
 - (d) the reporting to the court or the Commissioner, in such manner and at such time as the court or the Commissioner may determine, on the progress and supervision of, and the compliance with the probation conditions in question by, a probationer;
 - (e) the planning and implementation of programmes referred to in [section 3](#) in general or in respect of particular persons;
 - (f) the recruitment and in-service training of volunteers, and the regulation of their activities;
 - (g) the management of committees;
 - (h) the conducting of information classes;
 - (i) the reception, assessment and referral of an accused and the rendering of early intervention services and programmes, including mediation and family group conferencing;
- [Para. (i) added by s. 3 of Act 35/2002]
- (j) the investigation of the circumstances of an accused and the provision of a pre-trial

report recommending the desirability or otherwise of prosecution;

[Para. (j) added by s. 3 of Act 35/2002]

(k) the investigation of the circumstances of a convicted person, the compiling of a pre-sentencing report, the recommendation of an appropriate sentence and the giving of evidence before the court.

[Para. (k) added by s. 3 of Act 35/2002]

(2) A person who opposes or wilfully hinders or obstructs a probation officer or a volunteer in the exercise of his powers or the performance of his duties or functions shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months, or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

(3) (a) If a probationer fails to comply with the conditions on which he has been placed under the supervision of a probation officer, a probation officer may in writing apply to a magistrate or justice of the peace for the issue of a warrant for the arrest of such probationer.

(b) If a warrant referred to in paragraph (a) is issued, the probationer concerned may be arrested by a peace officer as defined in [section 1](#) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and shall be dealt with in accordance with the provisions of [section 50](#) of the said Act, and thereupon the provisions of [section 276A](#) (4) of the said Act shall apply *mutatis mutandis*.

4A. Appointment and duties of assistant probation officers

(1) The Minister may appoint as many suitable persons as he or she may deem necessary as assistant probation officers to perform the duties imposed by or under this Act or any other law on an assistant probation officer.

(2) The duties of an assistant probation officer shall include-

(a) the monitoring of a child subject to home-based supervision;

(b) the monitoring of persons subject to supervision;

(c) family finding;

(d) the gathering of information for assessment by the probation officer; and

(e) assisting a probation officer with his or her duties.

[S. 4A inserted by s. 4 of Act 35/2002]

4B. Assessment of arrested child

Any arrested child who has not been released shall be assessed by a probation officer as soon as reasonably possible, but before his or her first appearance in court in terms of [section 50\(1\)](#) (c) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977): Provided that if the child has not yet been assessed when brought before the court, the court may authorise the extension of the period within which the assessment must take place by periods not exceeding seven days at a time following his or her first court appearance.

[S. 4B inserted by s. 4 of Act 35/2002]

5. Establishment of pre-sentence evaluation committees

The Minister may establish pre-sentence evaluation committees in order to advise probation officers on recommendations to a court concerning possible ways in which any person awaiting his sentence can be dealt with.

6. Constitution and dissolution of committees, and meetings thereof

- (1) (a) A committee shall consist of not fewer than three and not more than five members.
- (b) A member of a committee shall be appointed by an authorized probation officer and on such conditions and for such period as the said probation officer may determine, and he may at any time terminate the membership of any member, if in his opinion there are sufficient reasons therefor.
- (c) The authorized probation officer shall designate one of the members of a committee as chairman.
- (d) Administrative work connected with the performance of the functions of a committee shall be performed by an officer of the department designated by the Director-General.
- (2) If any member of a committee dies or vacates his office before the expiration of the period for which he was appointed, an authorized probation officer may appoint a person to hold office for the unexpired part of the period for which such member was appointed.
- (3) Any person whose period of office as a member of a committee has expired by effluxion of time, shall be eligible for reappointment.
- (4) The Minister may at any time dissolve a committee.
- (5) A committee shall meet at such times and places as may be determined by the authorized probation officer.
- (6) The quorum for, and procedure at, meetings of a committee shall be as prescribed.

7. Allowances to members of, and payment of costs incurred by, committees

- (1) A member of a committee who is not an officer in the public service may be paid, while engaged in the business of the committee, such session, subsistence and transport allowances as the Minister may with the concurrence of the Minister of State Expenditure determine.
- (2) Expenses incurred by a committee in the performance of its functions shall be paid out of money appropriated by Parliament for that purpose.

8. Establishment, constitution, functions and dissolution of information classes

- (1) The Minister may establish information classes to give guidance to persons who have been ordered by a court to attend such classes, in regard to the causes of criminal tendencies and deviate behaviour and the consequences thereof and matters incidental thereto.
- (2) A probation officer may allow persons other than those referred to in subsection (1) to attend any information class, if such person in his opinion will probably benefit thereby.
- (3) Separate information classes may be established in respect of different categories of

persons or different types of crimes or types of deviate behaviour.

- (4) The constitution and functioning of information classes shall be as prescribed.
- (5) The Minister may at any time dissolve an information class.

8A. Establishment of probation advisory committee

The Minister may, in the prescribed manner, establish and maintain a probation advisory committee to advise him or her on matters regarding probation services in the country.

[S. 8A inserted by s. 5 of Act 35/2002]

9. Appointment and register of volunteers

- (1) An authorized probation officer may appoint any person as a volunteer to exercise such powers or to perform such duties in accordance with a programme referred to in [section 3](#) as may be agreed upon in writing with the said volunteer.
- (2) A volunteer shall not be appointed in terms of subsection (1), unless he -
 - (a) has a qualification which in the opinion of the authorized probation officer is appropriate; or
 - (b) has successfully completed the prescribed course; and
 - (c) has signed the agreement referred to in subsection (1).
- (3) The authorized probation officer shall deliver to each volunteer, on his appointment, a certificate of appointment setting out his powers and duties and shall keep a copy thereof as prescribed.
- (4) The authorized probation officer shall keep a register of volunteers in the prescribed manner.

10. Identification of volunteers

- (1) A volunteer shall not exercise any power or perform any duty unless he is in possession of his certificate of appointment.
- (2) A volunteer shall produce his certificate of appointment at the request of any person having a material interest in the programme in question.

11. Termination of appointment of volunteer and withdrawal of certificate of appointment

An authorized probation officer -

- (a) may terminate the appointment of a volunteer, if he is satisfied that -
 - (i) the volunteer does not perform his duties as set out in his certificate of appointment;
 - (ii) the volunteer has made a false statement or has given false information with a view to obtaining his appointment;
 - (iii) the services of the volunteer are no longer required or that circumstances are such

that his services can no longer be usefully employed in a programme referred to in [section 3](#);

- (b) shall withdraw the certificate of appointment of a person whose appointment has been terminated under paragraph (a) or to whom the certificate has wrongly been issued or who has died or who has resigned.

12. Penalty for pretence as volunteer

A person who pretends to be a volunteer shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

13. Remuneration of volunteers

- (1) The Minister may in his discretion out of money appropriated by Parliament for the purpose pay a volunteer the prescribed allowances, and may in addition, subject to subsection (3), out of such money compensate him in part or in full for expenses necessarily incurred by him in order to render services by virtue of this Act.
- (2) A volunteer shall in the prescribed manner submit his claim for reimbursement of expenses referred to in subsection (1) to the authorized probation officer within three months after such expenses have been incurred.
- (3) A volunteer shall not be entitled to reimbursement of expenses under subsection (1) -
 - (a) unless he has been authorized in advance by the authorized probation officer to incur such expenses;
 - (b) if he has already been adequately compensated from another source for such expenses.

14. False statements regarding expenses

A volunteer who makes a false statement regarding expenses referred to in [section 13](#) when submitting a claim in terms of the said section, shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

15. Liability for patrimonial loss arising from performance of service by volunteers

- (1) Subject to subsection (3), patrimonial loss which may be recovered from a volunteer by virtue of a delict committed by him in the performance of his functions in terms of this Act, may be recovered from the State.
- (2) Subsection (1) shall not be construed as precluding the State from obtaining indemnification against its liability in terms of the said subsection by means of insurance or otherwise.
- (3) Patrimonial loss which may be recovered from the State in terms of subsection (1) shall be reduced by the amount which the harmed person could recover from some person other than the volunteer by reason of the same cause of action.
- (4) In so far as the State has made a payment by virtue of a right of recovery in terms of subsection (1), all the relevant rights and legal remedies of the harmed person against the

volunteer shall pass to the State.

- (5) If any person as a result of the performance of services by a volunteer in terms of this Act has suffered patrimonial loss which cannot be recovered from the State in terms of subsection (1), the Director-General may, with the concurrence of the Department of State Expenditure, *ex gratia* pay that person such amount as the Director-General may deem reasonable.

15A. Family finders

Whenever a child is brought before the court and the child's parents or guardian is not present at court, a probation officer may designate a family finder to trace the parents or guardian and to bring them to court in order to assist the child in the case.

[S. 15A inserted by s. 6 of Act 35/2002]

16. Regulations

- (1) The Minister may make regulations regarding -
 - (a) any matter which may or is required to be prescribed in terms of this Act;
 - (b) generally, all matters which in his opinion are necessary or expedient to be prescribed in order to attain the objects of this Act.
- (2) A regulation may prescribe penalties for any contravention of the provisions thereof not exceeding a fine of R4 000 or imprisonment for a period of 12 months or both such fine and such imprisonment.
- (3) Regulations affecting State expenditure shall be made only with the concurrence of the Minister of State Expenditure.

17. Administration of Act

- (1) The State President may by proclamation in the *Gazette* assign the administration of the provisions of this Act, either generally or in respect of persons belonging to any specific class or category as defined in the said proclamation, to any Minister or partly to one Minister and partly to another Minister or other Ministers, and may in such proclamation specify the powers and functions which shall be exercised and performed by the several Ministers, and may further specify that any power or duty conferred or imposed by this Act upon the Minister shall be exercised or performed by one Minister acting with the concurrence of another Minister.
- (2) The State President may vary or amend any such proclamation.

18. Delegation

- (1) The Minister may -
 - (a) delegate to any officer of the department any power conferred upon the Minister by this Act, except the power under [section 16](#) to make regulations;
 - (b) authorize any such officer to perform any duty imposed upon the Minister by this Act.
- (2) The Minister may, with the concurrence of the Premier of a province -

- (a) delegate to the member of the Executive Council of that province responsible for welfare matters in the province any power conferred upon the Minister by this Act, except the power under [section 16](#) to make regulations;
 - (b) authorize that member of the Executive Council to perform any duty imposed upon the Minister by this Act.
- (3) The member of the Executive Council of a province responsible for welfare matters in the province may -
 - (a) delegate to any officer of the provincial administration concerned any power delegated to that member under subsection (2);
 - (b) authorize any such officer to perform any duty which that member is authorized to perform under subsection (2).
- (4) The Director-General may -
 - (a) delegate to any other officer of the department any power conferred upon the Director-General by this Act;
 - (b) authorize any such officer to perform any duty imposed upon the Director-General by this Act.
- (5) The Director-General may, with the concurrence of the Director-General of a provincial administration (in this section referred to as the “provincial Director-General”) -
 - (a) delegate to that provincial Director-General any power conferred upon the Director-General by this Act;
 - (b) authorize that provincial Director-General to perform any duty imposed upon the Director-General by this Act.
- (6) A provincial Director-General may -
 - (a) delegate to any other officer of the provincial administration concerned any power delegated to him or her under subsection (5);
 - (b) authorize any such officer to perform any duty which he or she is authorized to perform under subsection (5).
- (7) Any person to whom any power has been delegated or who has been authorized to perform a duty under this section, shall exercise that power or perform that duty subject to such conditions as the person who effected the delegation or granted the authorization considers necessary.
- (8) Any delegation of a power or authorization to perform a duty under this section -
 - (a) shall be done in writing;
 - (b) shall not prevent the person who effected the delegation or granted the authorization from exercising that power or performing that duty himself or herself;

- (c) may at any time be withdrawn in writing by that person.
[S. 18 substituted by s. 2 of Act 106/96]

19. Amendment of section 1 of Act 33 of 1960, as amended by section 1 of Act 50 of 1965, section 15 of Act 62 of 1966, section 16 of Act 102 of 1967, section 1 of Act 74 of 1973 and section 2 of Act 34 of 1986

Section 1 of the Children's Act, 1960, is hereby amended by the deletion of the definition of "probation officer".

20. Repeal of section 58 of Act 33 of 1960

Subject to the provisions of [section 2](#)(3) of this Act, section 58 of the Children's Act, 1960, is hereby repealed.

21. Repeal of Act 98 of 1986

The Probation Services Act (House of Assembly), 1986, is hereby repealed.

22. Short title and commencement

- (1) This Act shall be called the Probation Services Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be so fixed in respect of different provisions of this Act and different areas.