



ANNO QUARTO

GEORGII V REGIS.

A.D. 1913.

No. 1121.

An Act to permit the Release on Probation of Offenders in certain cases, and for other matters incidental thereto.

[*Assented to, December 11th, 1913.*]

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.

"Court" means—

(a) the Supreme Court or Judge thereof, or

(b) the Justice or Justices,

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

"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 (though without limiting the meaning of this definition) cases where such jurisdiction exists only with the consent of the person charged:

"Justice" means Justice of the Peace for the State of South Australia, and includes a Special Magistrate:

"Minister"

The Offenders Probation Act.—1913.

“Minister” means the Minister of the Crown to whom, for the time being, the administration of this Act is committed by the Governor:

“Offence” includes—

(a) any indictable offence;

(b) any offence punishable on summary conviction:

“Probationer” means any person with respect to whom a probation order is made:

“Probation order” means an order made under section 4 for the conditional discharge of an offender:

“Probative Court” means the Court before which a probationer is bound by his recognizance under this Act to appear for sentence, or for conviction and sentence, as the case may be:

“This Act” includes any regulations made under this Act.

Repeal.
No. 401 of 1887.

3. (1) “The Offenders Probation Act of 1887” is hereby repealed.

Savings.

(2) Such repeal shall not affect any right, privilege, interest, obligation, liability, or penalty created, existing, incurred, imposed, or liable to be imposed, before the passing of this Act, nor alter the effect of the doing or omission of anything before such passing.

Power to Courts to permit conditional discharge of offenders.

Imp. Act 7, Ed. VII.,
ch. 17, s. 1.

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

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

(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 person charged on probation, the Court may, without proceeding to a conviction, either—

Cf. S.A. Act, 1869-70,
s. 4.

I. make an order dismissing the information or complaint or charge; or

II. make an order discharging the person charged conditionally on his entering 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 when called upon at any time during such period, not exceeding three years, as is specified in the order.

(2) When

The Offenders Probation Act.—1913.

(2) When any person has been convicted, otherwise than by a Court of summary jurisdiction, of any offence punishable by imprisonment, and the Court is of opinion that, having regard to—

7, Ed. VII., c 17,
s. 1 (2).

- (a) the character, antecedents, age, health, or mental condition of the person convicted, or
- (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 person convicted on probation, the Court may, in lieu of imposing a sentence of imprisonment, make an order discharging such person conditionally on his entering into a recognizance, with or without sureties—

- (i.) to be of good behaviour, and
- (ii.) to appear before the Supreme Court or a Judge thereof for sentence when called upon at any time during such period, not exceeding three years, as is specified in the order.

(3) The Court may, in addition to any order made under subsection (1) or subsection (2) hereof—

Ibid.

Cf. S.A., 401, 1887,
s. 4.

(a) order the probationer—

- I. to pay such damages for injury or compensation for loss, (not exceeding in the case of a Court of Summary Jurisdiction Twenty-five Pounds, or, if a higher limit is fixed by any enactment relating to the offence, that higher limit) and
- II. such costs of the proceedings as the Court thinks reasonable; and

(b) if the probationer is under the age of sixteen years, and it appears to the Court that any parent or guardian of the probationer has by his conduct or neglect or otherwise conduced to the commission of the offence, order subject to paragraph I. of subdivision (a) of this subsection, payment of such damages and costs by such parent or guardian; and the Court may direct when and to whom and in what instalments the amount ordered to be paid shall be paid.

(4) Any order under subsection (3) hereof may 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, or, if he is under the age of sixteen years, his parent or guardian, to give security for the observance of such order, and may make the discharge of the probationer conditional upon such security being given.

Cf. *ibid.*, s. 4 (2)
and (3).

(5) Where

THE GAVIER

The Offenders Probation Act.—1913.

7, Ed. VII., c. 17,
s. 1 (4).

(5) Where any order is made under subsection (1) hereof, such 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.

Probation orders and
conditions of
recognizances.
Cf. *ibid.*, s. 2.

5. (1) A recognizance to be entered into under section 4 shall, if the Court so orders, contain—

- (a) a condition that the probationer shall be under the supervision of a probation officer during the period specified in the order, and
- (b) such other conditions for securing such supervision as are specified in the order, and
- (c) such other conditions as the Court, having regard to the particular circumstances of the case, orders to be inserted therein with respect to all or any of the following matters:—
 - (i.) for prohibiting the probationer from associating with thieves and other undesirable persons, or from frequenting undesirable places;
 - (ii.) as to abstention from intoxicating liquor, where the offence was drunkenness or an offence involving drunkenness or committed under the influence of drink;
 - (iii.) generally for securing that the probationer shall lead an honest and industrious life.

(2) The Court by which a probation order is made shall furnish the probationer with a notice in writing stating in simple language the conditions he is required to observe.

(3) Any Court upon making a probation order shall forthwith furnish the Minister with a copy thereof.

Probation officers.
Cf. *ibid.*, s. 3.

6. (1) The Governor may appoint any persons of either sex to be probation officers for the purposes of this Act.

(2) All persons so appointed shall, for the purposes of this Act, be under the control of the Minister.

(3) The Minister shall, upon receipt of a copy of a probation order, assign the probationer named therein to a probation officer for supervision; and the Minister shall cause notice in writing to be given to such probationer stating to what probation officer he is assigned.

Duties of probation
officers.
Cf. *ibid.*, s. 4.

7. It shall be the duty of every probation officer, subject to the regulations and to the directions of the Minister,—

- (a) to visit or receive reports from all probationers under his supervision at such reasonable intervals as are specified in their respective probation orders, or, subject thereto, as the probation officer thinks fit;
- (b) to

The Offenders Probation Act.—1913.

- (b) to see that every such probationer observes the conditions of his recognizance ;
- (c) to diligently observe the behaviour of every such probationer ;
- (d) to advise, assist, and befriend every such probationer, and when necessary, to endeavor to find him suitable employment ;
- (e) to do all other matters and things prescribed ;
- (f) to forward the prescribed reports to the Minister.

8. The probative Court may—

- (a) upon the application of the Minister or any person authorised by him in that behalf, and after notice to a probationer, vary the conditions of such probationer's recognizance ;
- (b) on being satisfied that a probationer's conduct has been such as to make it unnecessary that he should remain longer under supervision, discharge his recognizance.

Power to vary conditions of discharge.
Cf. *ibid.*, s. 5.

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

Provision in case of probationer's failing to observe conditions of discharge.

Cf. *ibid.*, s. 6, and S. A., 401, 1887, s. 6.

- (a) issue a warrant for such probationer's apprehension, or
- (b) if it thinks fit, issue a summons to such probationer and his sureties (if any) requiring him, or requiring him and them, to attend at such place and at such time as is specified in the summons.

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

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

(4) The probative Court on being satisfied that the probationer has failed to observe any condition of his recognizance, may forthwith, without further proof of his guilt, sentence him for the original offence, or, if he has not already been convicted thereof, convict and sentence him for the original offence.

10. (1) 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—

Regulations.

- (a) the appointment, resignation, and removal of probation officers ;
- (b) the

The Offenders Probation Act.—1913.

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

Publication and effect
of regulations.

(2) All regulations made under this Act—

- (a) shall be published in the *Government Gazette* ;
 (b) from the date of such publication, or from a later date fixed by the order making the same, shall (subject to subsection (3) hereof) be of the same effect as if they were contained in this Act, and
 (c) shall be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in Session, and if not, then within fourteen days after the commencement of the next Session.

Disallowance by
Parliament.

(3) If either House of Parliament passes a resolution disallowing any such regulation, of which resolution notice has been given at any time within fourteen sitting days of such House after such regulation has been laid before it, such regulation shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done, or of the omission of anything, in the meantime.

This subsection shall apply notwithstanding that the said fourteen sitting days, or some of them, do not occur in the same Session or Parliament as that in which the regulation is laid before such House.

Resolution to be
notified in *Gazette*.

(4) When a resolution has been passed as mentioned in subsection (3) hereof, notice of such resolution shall forthwith be published in the *Government Gazette*.

Act not to affect
State Children Act,
No. 641 of 1895.

11. Nothing in this Act contained shall affect "The State Children Act, 1895," or any amendment thereof.

Preservation of
powers conferred
by other Acts or law.

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 Act or otherwise by law upon any Court or any person acting judicially.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

DAY H. BOSANQUET, Governor.