

THE UNITED PROVINCES FIRST OFFENDERS PROBATION ACT, 1938¹

[U.P. ACT NO. VI OF 1938]

Amended by U.P. Act No. VIII of 1958

Adapted and modified by the Adaptation of Laws Order, 1950

[Received the assent of the Governor General on 22nd November, 1938 and was published² under section 76 of the Government of India Act, 1935, on 3rd December, 1938.]

AN

ACT

to provide for the release on probation of first offenders

Preamble WHEREAS it is expedient to amend and consolidate the law relating to release on probation of first offenders in certain cases and to provided for other matters incidental thereto.

It is hereby enacted as follows:

Short title,
extent and
commencement

1. (1) This Act may be called the United Provinces First Offenders' Probation Act, 1938.
- (2) It extends³ to the whole of [Uttar Pradesh.]⁴

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1. for S. O. R. see Gaz. Extra d. Jan. 18, 1938, pp. 6-7.
 2. See Gaz. 1938. Pt. VII, pp. 271-273.
 3. This Act has been extended to the areas mentioned in column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in column 4 against each such area:

| Area | Act or Order under which extended | Notification, if any, under which enforced | Date from which enforced |
|---|--|---|---|
| 1 | 2 | 3 | 4 |
| 1. Banaras District | Banaras (application of Law) Order, 1949, section 3. | No. 3262(1)/XVII, d. Nov. 30, 1949 | ss. 1, 2, 3, 4 (1), 5 to 8. 13. 14 and 15 came in to force with, effect from Nov. 30, 1949, and ss. 4 (2), (3) and (4) and ss. 9 to 12, i.e. w.e.f. Feb. 1, 1950. Sec Not. no. 405/ XVII, d. Jan. 29, 1950 Gaz. Extra . p. 6. |
| 2. Tehri-Garhwal District | Tehri-Garhwal (Application of laws) Order, 1919, section 3 | No. 3262(2)/XVII, Nov 1949 | ss. 1, 2, 3, 4 (i), 5 to 8, 13, 14 and 15 came into force on Nov. 30, 1949 |
| 3. Jaunsar-Bawar pargana of the DehraDun District | section 92(1) of the Govt. of India Act, 1935 | Not no. 3479/XXII 1951/1940, d. Jan. 16 1941, in Gaz. d Jan. 18, 1, 4 pt. I, p. 21. | January 18, 1941. |
| 4. Mirzapur District south of the Kaimur Rang | Ditto | Ditto | Ditto |

4. Subs. by the A.O. 1950 for (the united provinces)

[The United Provinces First Offenders' Probation Act, 1938]

[Section 2-4]

(3) (a) This section shall come into force at once.

(b) The [State Government]¹ may, by notification in the Gazette, direct² that all or any of the remaining provisions of this Act shall come into force in any local area on such date or dates as may be specified in such notification.

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| Interpretation | 2. | In this Act, unless there is anything repugnant in the subject or context---- |
| | | (a) the "code" means the Code to Criminal Procedure, 1898; |
| Act 5 of 1898 | | (b) such of the expressions used in this Act as are defined in the Code have the meanings assigned to them in the Code. |
| Powers of court to release certain offenders after admonition | 3. | In any case in which a person is found guilty of the offences of theft, dishonest misappropriation, or cheating, punishable under the Indian penal Code, or of any offence punishable with not more than two years imprisonment and no previous conviction is proved against him, the court, by which he is found guilty may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed instead of sentencing him to any punishment, release him after due admonition. |
| Power of court to release certain offenders on probation of good conduct | 4. | <p>(1) When any person is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character, antecedents or physical or mental condition of the offender and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not exceeding three years as the court may direct and in the meantime to keep the peace and be of good behavior:</p> <p>Provided that the court shall not direct the release of an offender under this section unless it is satisfied that the offender, or his surety, has a fixed place of abode and regular occupation in the place for which the court acts, or in which the offender is likely to live during the period named for the observance of the conditions:</p> |

1. Subs. by the A.O. 1950 for (provl.Govt).

2. Section 2, 3, 4 (1), 5, 6, 7, 8, 13, 14 and 15 came into force in the whole of the U. P. on Feb. 1, 1939, and ss.4 (2), (3) and (4), 9, 10, 11 and 12 came into force in the district of Lucknow, Kanpur, Banaras, Allahabad, Agra, Bareilly and Meerut on March 1, 1939, see not.no. 240/VI-163(1)-37, d. Jan. 23, 1939, In Gaz. 1939, Pt. I, p. 99, ss. 4 (2), (3) and (4) and 'ss. 9, 10, 11 and 12, came into force in the district of Aligarh on July 1, 1941, see not. no. 453/VI-594-41, d. June 17, 1941 in Gaz. 1941. Pt. I, p. 294; and ss.4(2), (3) and (4) and ss.9, 10, 11 and 12 came into force in the districts of Farrukhabad, Faizabad, Jhansi and Moradabad on Oct. 1, 1947, see not. no. 3588/VI-756-46, d. Oct. 4, 1947. Gaz. Pt. I, p. 758, and sections 4 (2), (3) and (4) and Ss. 9, 10, 11 and 12 came into force in the districts of Ghazipur, Jalaun, Dehra Dun and Unnao on March 1, 1950, see not. no. Pro. 88/VI-664-46, d. March 1, 1950, Gaz., Pt. I, p. 150.

Provided also that if a person under twenty-one years of age is convicted of any offence under the Indian penal Code, or any other enactments prescribed in this behalf under rules made by the [State Government]¹ which is punishable with imprisonment not exceeding six months the court shall take action under this section unless, for special reasons to be recorded in writing, it does not consider it proper to do so.

- (2) Where the offender ordered to be released under sub-section (1) is under twenty-four years of age, the court may make a supervision order directing that such offender shall be under the supervision of such probation officer as may be named in the order during the period specified therein and imposing such other conditions for securing such supervision as may be specified in the order:

Provided that the period so specified shall not extend beyond the date on which, in the opinion of the court, the offender will attain the age of twenty-five years.

- (3) A court making an order under sub-section (2) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions with respect to residence, abstention from intoxicants and any other matters as the court may, having regard to the particular circumstances of the case, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.
- (4) A Court making an order under sub-section (2) shall furnish to the offender and the sureties, if any, a notice in writing stating in simple terms the conditions of the bond.

Procedure in cases submitted by magistrate not empowered to act under sections 3 and 4

5. Notwithstanding anything contained in sections 3 and 4 where any first offender is found guilty of an offence by a magistrate of the third class or a magistrate of the second class not specially empowered by the [State Government]¹ in this behalf, and the magistrate is of opinion that the powers conferred by the said sections should be exercised, he shall record his opinion to that effect and submit the proceedings to a magistrate of the first class or sub-divisional Magistrate, forwarding the accused to, or taking bail for his appearance before such magistrate who may thereupon pass such sentence or make such order as he might have passed or made, if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Powers of Appellate Courts

6. (1) An order under section 3 or section 4 may be made by an appellate court or by the High Court when exercising its powers of revision.
- (2) When an order has been made under section 3, 4 or 5 of this Act in respect of an offender, the High Court may on appeal, when there is a right of appeal to such Court or when exercising its powers of revision, set aside such order and, in lieu thereof, pass sentence on such offender according to law :

Provided that it shall not inflict a greater punishment than might have been inflicted by the court by which the offender was convicted.

1. Subs. by the A. O. 1950 for (Provincial Government).

[The United Provinces First Offenders' Probation Act, 1938]

[Section 7-9]

Procedure in
case of
offender
failing to
observe
conditions of
release

7. (1) If the court before which the offender is bound by his bond under section 4 to appear for sentence when called upon, or any court which could have dealt with the offender in respect of his original offence, has reason to believe that the offender has failed to observe any of the conditions of the bond executed by him, it may issue a warrant for his apprehension or may, if it thinks fit, issue a summons to the offender and his sureties, if any, requiring him or them to attend before it at such time as may be specified in the summons.
- (2) The court before which an offender is so brought or appears may either remand him to custody until the case is concluded or admit him to bail, with or without sureties, to appear on the date of hearing.
- (3) If the court, after hearing the case, is satisfied that the offender has failed to observe any of the conditions of the bond executed by him, it may forthwith,-
- (a) sentence him for the original offence, or
- (b) without prejudice to the continuance in force of the bond or bonds, impose upon him, in respect of the first such failure, a penalty not exceeding the amount of the fine which may be imposed for the original offence but in no case exceeding fifty rupees.
- (4) If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the court may, from time to time, fix, the court, instead of realizing the penalty, may sentence the offender for the original offence.

Provisions as
to bonds

8. The provisions of sections 122, 126, 126-A, 406-A (b) and (c), 514, 514-A, 514-B, 515 of the Code shall, so far as may be, apply in the case of sureties offered and bonds given under this Act as if they had been offered and given under Chapter VIII of the Code.

Appointment
of probation
officers

9. (1) A probation officer named in an order under section 4 (2) shall be-----
- (a) any person appointed to be a probation officer by the [State Government]¹, or
- (b) any person provided for this purpose by a society recognized in this behalf by the [State Government]¹, or
- (c) in exceptional case, any other person who, in the opinion of the court, is a fit person to act as a probation officer in the special circumstances of the case.

Explanation-Probation officer may be a person of either sex.

- (2) In nominating a probation officer, the court shall be guided by any general or special instructions the [State Government]¹ may issue in this behalf.

1. Subs. by the A. O. 1950 for (Provl. Govt.)

- (3) A probation officer, in the exercise of his duties under any supervision order, shall be subject to the control of the District Magistrate of the district in which the offender for the time being resides.
- (4) The court, before which an offender is bound by his bond to appear for sentence when called upon, or the District Magistrate of the district in which the offender for the time being resides may at any time, appoint another probation officer in the place of the person named in a supervision order :

Provided that if such person was provided by a society, the probation officer to be appointed in his place shall also be one provided by such society, unless the society is unable to provide a man suitable in the opinion of such court or magistrate to act as a probation officer.

Duties of
probation
officers

- 10. A probation officer shall, subject to rules made under this Act and to the directions of the courts,-
 - (a) visit or receive visits from the offender at such reasonable intervals as may be specified in the supervision order, or subject thereto, as the probation officer may think fit ;
 - (b) see that he observes the conditions of the bond or bonds executed by him ;
 - (c) report to the court as to his behavior; and
 - (d) advise, assist and befriend him, and when necessary, endeavour to find suitable employment for him.

Variation of
condition of
probation and
discharge of
bonds
executed by
offender

- 11. The court before which any offender is bound by his bond under section 4, to appear for sentence when called upon --
 - (a) may at any time, if it appears upon the application of the probation officer, that it is expedient that the bond or bonds executed by the offender should be varied, summon him, and if he fails to show cause why such variation should not be made, vary the bond or bonds by extending or diminishing the duration thereof (so, however, that it shall not exceed three years from the date of the original order and shall not extend beyond the date on which in the opinion of the court, the offender shall attain the age of twenty-five years), or by altering the conditions thereof or by inserting additional conditions therein, or
 - (b) may, on application made by the probation officer and on being satisfied that the conduct of the offender has been such as to make unnecessary that he should be kept any longer under supervision, discharge the bond or bonds executed by him.

Effect of
variation of
bond sureties

- 12. (1) When any condition in a bond is relaxed under the provisions of section 11, the condition as so relaxed, and not the original condition, shall be binding on the sureties to the bond.

[The United Provinces First Offenders' Probation Act, 1938]

[Section 12A-15]

- (2) Where any condition in a bond is made more onerous under the provisions of section 11, such condition shall not be binding in the more onerous form on any surety to the bond, unless he has accepted it in writing, but the condition in its original form shall continue to bind the surety who has not accepted the condition in its more onerous form.
- (3) Where any additional condition is imposed under the provisions of section 11, such additional condition shall not be binding on any surety to the bond unless he has accepted it in writing.
- (4) No variation in, or addition to, the conditions of any bond made under the provisions of section 11, shall affect the liability of any surety to the bond in respect of any condition which has not been varied.

Delegation of power [12-A] The State Government may, by a notification in the official Gazette, direct that all or any of the powers exercisable by it under this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in this behalf be exercised also by such officer or authority as may be specified.]¹

Power of State Government to make rules 13. (1) The [State Government]² may, either generally or specially for any area or areas in which this Act is in force, make rules consistent with this Act for carrying out all or any of the purposes thereof.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate or prescribe-

- (a) any matters incidental to the appointment, resignation and removal of probation officers;
- (b) the payment of remuneration and expenses to probation officers appointed by the [State Government]² direct, or of a subsidy to any society which provides persons for appointment as probation officers;
- (c) the conditions on which societies may be recognized for the purpose of clause (b) of sub-section (1) of section 9; and
- (d) the enactments referred to in the second proviso to section 4 (1).

(3) All rules made under this section shall be subject to the condition of previous publication.

Saving of the operation of certain enactments 14. Nothing in this Act shall affect the provisions of section 31 of the Reformatory Schools Act, 1897.

Repeal 15. Sections 562, 563 and 564 of the Code are hereby repealed.

1. Section 12-A ins. by section 2 of U. P. Act VIII of 1958.

2. Subs. by A. O. 1950 for (Provincial Government).