

CRIMINAL JUSTICE

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Criminal Justice Act 1999

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The Criminal Justice Act 1999 No 8 was certified and commenced on 18 October 1999 (GN No 285/1999; Gaz 69/1999).

Amending Legislation	Certified	Date of Commencement
Criminal Justice (Amendment) Act 2009 No 12	15 October 2009	15 October 2009
Statute Law Revision Act 2011 No 8	15 April 2011	15 April 2011
Criminal Justice (Amendment) Act 2020 No 16	23 October 2020	23 October 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to provide new methods of dealing with offenders liable to imprisonment by a system of probation, community service and parole.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Criminal Justice Act 1999* and came into effect on 18 October 1999.

[s 1 am Act 8 of 2011 s 12 and Sch 1[48], opn 15 Apr 2011]

2 Interpretation

In this Act:

‘Board’ means the Parole Board established under Section 32;

‘Chief Controller’ means the Chief Controller of a Community Service Group under Section 20;

‘Chief Probation Officer’ means the Chief Probation Officer under Section 4(5);

‘Community Service Group’ means a Community Service Group established under Section 19;

‘community service order’ means an order to serve in a Community Service Group made under Part 3;

‘Controller’ means a Controller of a Community Service Group under Section 20;

‘court’ means the Supreme Court or the District Court;

‘fine’ includes any sum or money adjudged to be paid by a conviction, whether as a fine or for costs or otherwise;

‘Group’ means a Community Service Group established under Section 19;

‘legal representative’ means a legal practitioner under the *Legal Practitioners Act 2019*;

‘Minister’ means the Minister for Justice;

[def insrt Act 16 of 2020 s 4, opn 23 Oct 2020]

‘probationer’ means a person:

(a) in respect of whom a probation order is in force; or

(b) who has been released on probation under Part 4;

‘probation officer’ means a probation officer appointed under Section 4(1) or (2);

‘probation order’ means an order for probation under Part 2;

‘Registrar’ means the Registrar of Courts; and

‘Secretary’ means the Secretary for Justice.

[def insrt Act 16 of 2020 s 4, opn 23 Oct 2020]

[s 2 am Act 8 of 2011 s 12 and Sch 1[48], opn 15 Apr 2011]

3 **Application**

- (1) Nothing in this Act shall be construed to limit or affect in any way:
 - (a) the prerogative of mercy; or
 - (b) any pardon, respite, substitution or remission of sentence by the President which may be authorised by law.
- (2) This Act shall apply to offences committed before or after the commencement of this Act.

PART 2 — PROBATION

4 Probation officers

- (1) The Chief Secretary may, by notice in the Gazette, appoint:
 - (a) a public officer as Chief Probation Officer; and
 - (b) public officers as probation officers.
- (2) Notwithstanding subsection (1), the Minister may from time to time appoint a person, or the holder for the time being of any office or appointment, as a probation officer in a part-time capacity.
- (3) No person appointed under subsection (2) shall by virtue of that appointment become an officer or employee of the Public Service, and nothing in the *Public Service Act 2016* shall apply with respect to that appointment.
- (4) A probation officer appointed under subsection (2) may be paid out of money appropriated by Parliament for the purpose of such remuneration by way of salary or fees, and such allowances, as may be determined by the Minister with the concurrence of the Minister for Finance.

5 Powers and duties of probation officers

- (1) A probation officer:
 - (a) may, and shall when required by the court, report to the court on the character and personal history of a person convicted of an offence punishable by imprisonment, with a view to assisting the court in determining the most suitable method of dealing with his or her case; and
 - (b) may in that report advise the court whether the offender would be likely to respond satisfactorily to probation and whether any condition of probation should be imposed.
- (2) A probation officer shall:
 - (a) supervise, advise, assist and where possible, befriend a probationer placed under his or her supervision, with a view to assisting his or her social rehabilitation and preventing the commission of further offences by him or her; and
 - (b) perform such other duties as may be prescribed under this Act or any other written law or as directed by the Chief Probation Officer.
- (3) A probation officer may commence, appear in or continue any proceedings on behalf of any other probation officer.
- (4) In the exercise of his or her powers and duties, a probation officer shall have the powers, authority, protection and privileges of a police officer.

6 Report of probation officer to be shown or given to offender

- (1) Where, under any provision of this Act or of any other written law, a written report is made to the court in respect of an offender by a probation officer, a copy of the report shall be shown or, if the court directs, shall be given to the legal representative appearing for the offender or, if the offender is not represented by legal representative, to the offender.

- (2) An offender or his or her legal representative may tender evidence on any matter referred to in a report, whether written or oral, that is made to the court in respect of the offender by the probation officer.
- (3) Failure to show or give a copy of the report in accordance with this Section shall not affect the validity of the proceeding in the court or of an order made or sentence passed by the court.

7 Probation orders

- (1) Where a person is convicted of an offence punishable by imprisonment the court may, instead of sentencing him or her to imprisonment, make a probation order releasing the person on probation for a period specified in the order, being a period of not less than 1 year nor more than 3 years.
- (2) Where the court sentences a person to imprisonment for less than 1 year, it may, as part of the sentence, make a probation order ordering that on his or her release from imprisonment he or she shall be on probation for a period, not exceeding 1 year, specified by the court.
- (3) Where the court makes a probation order under this Section, it may also sentence that person to pay a fine authorised by law.
- (4) A person released from imprisonment under subsection (2) shall, on his or her release from imprisonment, be deemed to be an offender released on probation under Part 4 and the conditions imposed under this subsection shall be deemed to be special conditions imposed under that Part, and the provisions of that Part shall apply accordingly.
- (5) For the purpose of an appeal or application for leave to appeal, a release on probation under this Section shall be deemed to be a sentence or, where a fine is imposed, to be part of the sentence.
- (6) Where a court has made a probation order under this Section, the Registrar shall notify the Secretary.

8 Probation may follow community service

- (1) Where a court makes a community service order under Section 22 or 23, it may also make a probation order for a period ending not later than 1 year after the expiry of the period of community service.
- (2) A court making a probation order under subsection (1) shall direct whether the period of probation shall commence on the date of commencement or the expiry of the period of community service.
- (3) Where a court has made a probation order under subsection (1), the Registrar shall notify the Secretary.

9 Probation under other laws

- (1) Nothing in this Act affects the power conferred on a court by any other law to release an offender on probation for a period and on conditions specified in that law.
- (2) Notwithstanding subsection (1), where a law provides for probation, the making of a probation order or the release of a person on probation, this Act shall apply in the absence of any express provisions to the contrary in that law.

10 Probationers to be supervised

Every probationer shall, during the period of his or her probation, be under the supervision of a probation officer.

11 Conditions of release

- (1) A probation order shall include the following conditions:
 - (a) within 24 hours after his or her release on probation in the case of a probationer under Section 7, or after the commencement of his or her period of probation in the case of a probationer under Section 8, the probationer shall report in person to the probation officer under whose supervision he or she has been placed, and shall further report as and when he or she is required to do so by the probation officer;
 - (b) the probationer shall give to the probation officer reasonable notice of his or her intention to move from his or her address;
 - (c) the probationer shall not reside at an address that is not approved by the probation officer;
 - (d) the probationer shall not continue in an employment, or continue to engage in an occupation that is not approved by the probation officer;
 - (e) the probationer shall not associate with a specified person, or with persons of a specified class, with whom the probation officer has, in writing, warned him or her not to associate; and
 - (f) the probationer shall keep the peace, be of good behaviour and commit no offence against the law.
- (2) Where a person is released on probation, the probation officer supervising him or her shall issue to him or her a written copy of his or her probation order showing the conditions of his or her probation order.

12 Additional conditions

- (1) In addition to the conditions set out in Section 11, an order for probation made under Section 7 or 8 in respect of a community service order made under Section 22, may contain all or any of the following conditions:
 - (a) that the probationer shall, within such period and by such instalments as may from time to time be directed by the probation officer, pay the whole or such portion as the court may direct of the costs of the prosecution in relation to the offence for which he or she is released on probation and any other offence of which he or she may be convicted or for which he or she may be brought up for sentence at the same time;
 - (b) that he or she shall abstain from the use of intoxicating liquor or drugs;
 - (c) that he or she shall not, either alone or jointly with another person, own or have in his or her possession a specified article or articles of a specified class;
 - (d) that he or she shall not associate with a specified person or with persons of a specified class;
 - (e) that he or she shall undergo a specified course of education or training;
 - (f) such conditions relating to his or her place of residence, employment, or earnings, as the court making the order thinks fit; or
 - (g) such other conditions as the court making the order thinks necessary for ensuring his or her good conduct or for preventing the commission by him or her of an offence.

- (2) In addition to the conditions set out in Section 11, an order for probation under Section 8 made in respect of a community service order under Section 23 may contain all or any of the following conditions:
 - (a) that the probationer shall undergo a specified course of education or training;
 - (b) such conditions relating to his or her place of residence, employment, or earnings, as the court making the order thinks fit; or
 - (c) such other conditions as the court making the order thinks necessary for ensuring his or her good conduct or for preventing the commission by him or her of an offence.
- (3) Where a direction for the payment of damages or compensation is given under this Section and at the expiry of the period of probation a sum remains owing to a person under that direction, the Registrar shall issue a certificate certifying the direction and the sum still owing.
- (4) Where a certificate under subsection (3) is filed in the court, it may be enforced as if it were a judgment of that court.
- (5) No civil remedy for an act or omission shall be suspended by the imposition of a condition for the payment of damages or compensation.

13 Variation of conditions and discharge from probation

- (1) A probationer may, in accordance with subsection (6):
 - (a) at any time, apply to the court for the remission, suspension or variation of any condition of his or her probation order; or
 - (b) at any time after the expiration of half the period of his or her probation, apply to the court for the discharge of his or her probation order.
- (2) Subject to subsection (1), a probation officer may, in relation to a probation order, at any time apply to the court for:
 - (a) remission, suspension, or variation of any condition of the order;
 - (b) the discharge of the order;
 - (c) imposition of an additional condition; or
 - (d) extension of the period of probation where that period is less than 3 years.
- (3) On the hearing of an application under this Section, the court, having regard to any change of circumstances of the probationer and any other information before it in relation to the probationer, may:
 - (a) remit, suspend or vary any condition of the order;
 - (b) discharge the order;
 - (c) impose an additional condition; or
 - (d) subject to subsection (4), extend the period of probation.

[subs (3) am Act 8 of 2011 s 12 and Sch 1[48], opn 15 Apr 2011]

- (4) The court shall not extend the period of probation under subsection (3)(d):
 - (a) in the case of an order made under Section 7, that is beyond the period of 3 years from the date on which that period began; or
 - (b) in the case of an order made under Section 8, that is beyond the period of 1 year after the expiry of the period of community service.
- (5) Where the court discharges a probation order under subsection (3)(b), the order shall expire on the date specified in the order of discharge.
- (6) Every application under this Section shall be made:

- (a) where the probation order was made by the Supreme Court, then to the Supreme Court; or
 - (b) where the probation order was made by the District Court or by the Supreme Court on appeal from the District Court, then to the District Court.
- (7) A copy of every application under this Section shall, either before or immediately after the application is lodged in the court registry, be served on the probation officer or, as the case may require, the probationer.
- (8) Where an application is made under this Section for the remission, suspension or variation of any condition under Section 12(1)(c), (d), (e) or (f), the probation officer may, in his or her discretion, suspend the condition until the application has been heard and disposed of.
- (9) An application under this Section may, in the discretion of the court, be heard either in open court or in chambers and the provisions of Section 41 shall apply with all necessary modifications.
- (10) Notice of any order made under this Section shall be given by the Registrar to the Secretary.

14 Arrest of probationers

- (1) A probationer who contravenes or fails to comply with any condition of his or her probation order breaches his or her probation.
- (2) Where a probation officer or a police officer believes on reasonable grounds that a probationer has breached his or her probation, he or she may arrest the probationer without warrant.
- (3) Where, on information, it appears to a court that a probationer has breached his or her probation, the court may:
- (a) issue a summons requiring the probationer to appear before it; or
 - (b) where the information is on oath, issue a warrant for his or her arrest.

15 Breach of probation

- (1) A probationer who breaches his or her probation is guilty of an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100.
- (2) Where a probationer is convicted under this Section, the court may, in addition to or instead of sentencing him or her under subsection (1), do all or any of the following:
- (a) in respect of a probation order made under Section 7, extend the period of probation by a specified period expiring not later than 3 years after the date on which that period began;
 - (b) in respect of a probation order made under Section 8, extend the period of probation by a specified period expiring not later than 1 year from the date of expiry of the period of his or her community service;
 - (c) vary any condition of his or her probation order;
 - (d) impose an additional condition; or
 - (e) where an application has been made under Section 16, sentence the probationer in accordance with that Section.
- (3) Notice of an order made under this Section shall be given by the Registrar to the Secretary.

16 Sentence for original offence

- (1) Where a probationer, including a probationer who in addition to being released on probation has also been sentenced to pay a fine:
 - (a) is convicted of another offence committed during the period of probation; or
 - (b) is charged with a breach of his or her probation order, a probation officer may apply to the court to sentence him or her for the offence for which he or she was released on probation.
- (2) Notice of an application under subsection (1) shall be served on the probationer.
- (3) An application under this Section shall be made:
 - (a) where the probation order was made by the Supreme Court, to the Supreme Court; and
 - (b) where the probation order was made by the District Court or by the Supreme Court on appeal from the District Court, to the District Court.
- (4) Where the application is dealt with by a Judge or magistrate other than the Judge or magistrate who released the offender on probation, the court shall, before sentencing the offender, make such inquiries as to the circumstances of the case as it considers reasonable, and may hear such evidence as it thinks relevant.
- (5) The court hearing an application under this Section may deal with the offender for the offence for which he or she was released on probation in any way in which a court could have dealt with him or her if he or she had just been convicted of that offence:
 - (a) other than by again releasing him or her on probation; and
 - (b) in any case where he or she was also sentenced to pay a fine, other than by sentencing him or her to pay a further fine.
- (6) An offender who is not sentenced or otherwise dealt with under subsection (5) for the offence for which he or she was released on probation shall continue to be on probation.

17 Effect of subsequent sentence on probation

- (1) Where a person released on probation under this Part is sentenced in respect of an offence to life imprisonment or for a term of 1 year or more, his or her probation order shall expire.
- (2) Where a person released on probation under this Part is sentenced in respect of an offence to imprisonment for less than 1 year, the period of his or her probation shall continue to run while he or she is detained under the sentence, and on his or her release from detention he or she shall continue to be on probation for the unexpired residue of that period, unless he or she is sooner discharged from probation under this Part.

18 Discharge on expiry of probation

- (1) Subject to subsection (2), a probation order is discharged on the expiry of the period of probation and the person to whom the order applies is discharged in respect of the offence for which he or she was originally released on probation, as if he or she had been sentenced and had served the sentence.

- (2) Notwithstanding subsection (1), proceedings under Section 15(1) may be instituted against a person referred to in subsection (1) within a period of 6 months after the expiration of the period of his or her probation in respect of a breach occurring during the period of probation, for any contravention of or failure to comply with a condition of his or her order for probation, and the court on conviction may impose any of the penalties under Section 15(2).

PART 3 — COMMUNITY SERVICE

19 Establishment of Community Service Groups

The Minister may, by notice in the Gazette:

- (a) establish a Community Service Group; or
- (b) revoke the establishment of a Community Service Group.

20 Controllers of Community Service Groups

- (1) The Chief Probation Officer is *ex officio* the Chief Controller of Community Services Groups, and probation officers are *ex officio* Controllers of Community Services Groups.
- (2) Subject to any directions of the Secretary, the Chief Controller shall be responsible for the general administration, control and supervision of Community Service Groups.
- (3) The Chief Controller may by written instrument of delegation, delegate to another Controller any power, duty or function of his or her office other than this power of delegation.
- (4) A delegation under subsection (4) is revocable and does not prevent the exercise of a power, duty or function by the Chief Controller.

21 Control of Community Service Groups

- (1) A Community Service Group shall be under the control and supervision of a Controller.
- (2) A person ordered to serve in a Community Service Group shall be in the legal custody of the Controller:
 - (a) throughout the period he or she is detained during the performance of his or her service; and
 - (b) while he or she is travelling after reporting to the Controller to any place where he or she has been directed by the Controller to work.
- (3) A person serving in a Community Service Group shall be subject to the control, directions and supervision of the Controller who, on each occasion on which he or she is serving, is in control of his or her Community Service Group.
- (4) In the exercise of his or her powers and duties in relation to a Community Service Group, a Controller shall have all the powers, authority, protection and privileges of a police officer.

22 Offenders guilty of offence punishable by imprisonment

- (1) Where a person who is not less than 13 years of age is found guilty of an offence punishable by imprisonment, the court may make a community service order ordering him or her to serve in a Community Service Group for a period not exceeding 12 months.
- (2) A community service order may be made irrespective of whether or not the court convicts the offender of the offence.
- (3) Where the court makes a community service order in respect of a person,

it may also impose upon him or her a fine or other monetary penalty authorised by law, but shall not impose any other sentence.

23 Offenders liable to imprisonment for non-payment of fine

- (1) In any case, where an order is made for the imprisonment of a person by reason of non-payment of a fine imposed on him or her, a court may, subject to Section 16 and after considering the report which it would be required to consider after taking into account any other fine owing by that person, make a community service order in respect of that person for a period not exceeding 12 months.
- (2) A community service order may be made under this Section notwithstanding that the offence in respect of which the fine was imposed was not punishable by imprisonment.
- (3) Where a community service order is made under this Section, that part of the offender's original sentence which dealt with the imposition of the fine that has been taken into account under subsection (1), shall be deemed to be cancelled in respect of any part of the fine unpaid when the order was made.
- (4) Notwithstanding Section 3(2), this Section applies only in respect of fines imposed after the commencement of this Act.
- (5) A person in respect of whom a community service order under this Section is made may, within 7 days of the service of the order on him or her, apply to the court for the order to be suspended, varied or cancelled.
- (6) Where a court receives an application under subsection (5), the order shall be suspended until final determination of the application has been made by the court.

24 Court to consider report of probation officer

- (1) A court shall not make a community service order in respect of a person until a report on his or her character and personal history and any other relevant circumstance has been made by a probation officer and has been considered by the court.
- (2) A community service order shall not be invalidated on the ground that a report by a probation officer was not made or was not considered by the court.
- (3) Where a court makes a community service order before a report from a probation officer has been made and considered under this Section, the defendant, the prosecutor or any legal representative appearing on behalf of the Republic may at any time apply to have the sentence reviewed.

25 Periods of community service

- (1) A person, who is ordered to serve in a Community Service Group, shall, during the period of community service, be required to report to the Controller or any other Controller specified by the Chief Controller on a specified number of occasions each week, and on each such occasion to place himself or herself in the custody of that Controller for a specified period.
- (2) A community service order shall specify:

- (a) the duration of each period of custody;
 - (b) the Controller to whom the offender is required to report on the first occasion after the order is made;
 - (c) the day and time at which he or she is required to report under paragraph (b); and
 - (d) the number of occasions in each week on which he or she is required to report to a Controller under subsection (1).
- (3) Periods of service in any week need not be of the same duration, but no period of service shall exceed 12 hours.
 - (4) The day and time at which a person ordered to serve in a Community Service Group is required to report to a Controller after the first reporting shall be fixed by the Controller, who shall have regard to any general directions given by the court in making the order.
 - (5) The Chief Controller may, where he or she considers that there are special circumstances requiring it, excuse a person from reporting on anyone or more occasions in any one week.
 - (6) The times at which a person ordered to serve in a Community Service Group is required to report for that purpose and the periods during which he or she is required to remain in custody, shall be arranged so as to avoid interference, so far as is practicable, with his or her attendance at an educational institution or his or her work, or his or her genuine religious observances.

26 Performance of community service

- (1) A period of service under a community service order shall be spent in participating in such activities, attending such classes or groups, or undergoing such instruction as the Controller considers appropriate and conducive to the reformation and training of the person performing the community service.
- (2) A person may, at any time while performing community service, be directed to engage in such work as the Controller thinks appropriate.
- (3) Subject to subsection (4), work under subsection (2) may be:
 - (a) at a hospital, church, or charitable or educational institution;
 - (b) at the home of an old, infirm, or handicapped person or at an institution for old, infirm or handicapped persons;
 - (c) on land which is owned, leased, occupied or administered by the Republic or a public body approved by the Minister for the purpose;
 - (d) the clearing of a litter or debris at any place used by the general public, the prevention of coastal erosion or any other measure for the protection and preservation of the environment;
 - (e) if the order was made under Section 22, substitute for it any sentence, other than a community service order, which, could have been imposed on the offender at the time his or her community service order was made; or
 - (f) if the order was made under Section 23, substitute for it a sentence to a term of imprisonment not exceeding the maximum term for which the offender could have been sentenced if he or she had been dealt with under another written law instead of being ordered to perform community service.

- (7) Where a sentence is substituted for a community service order under this Section, the order is terminated.

27 Variation or cancellation of community service order

- (1) A community service order may at any time, on the application of the offender or of the Chief Controller, or of a probation officer in respect of a probation order made in conjunction with the community service order, be varied or cancelled by the court.
- (2) A community service order may be varied or cancelled under this Section on the ground that there has been a change of circumstances since the order was made or, if the court considers that a continuation of the order is no longer necessary in the interests of the community or the offender, the order may be cancelled on that ground.

28 Report on conduct of offender

Where a person has served in a Community Service Group and is later brought before a court for any other offence:

- (a) a probation officer;
 (b) the Chief Controller; or
 (c) any other officer of the Department of Justice,

may make a report in writing to the court on the conduct of that person while he or she was in legal custody under the community service order, and, where the report is made by a person other than the probation officer, the provisions of Section 6 apply with the necessary modifications.

29 Offences

- (1) A person ordered to serve in a Community Service Group who:
- (a) fails without reasonable excuse to report to the Controller of his or her Group as required by the court making the order or in accordance with instructions given to him or her under Section 25(4);
- (b) fails without reasonable excuse to report to the place of work as directed by the Chief Controller under Section 26(2);
- (c) fails without reasonable excuse to obey any rules governing the Community Service Group in which he or she is required to serve or any directions of a Controller regarding the manner in which his or her time is to be spent while he or she is in the custody of the Controller;
- (d) without reasonable excuse, leaves the place where he or she is directed to perform work when he or she should be at that place;
- (e) is idle and careless at work, refuses to work, or neglects or wilfully mismanages his or her work while he or she is in the custody of a Controller;
- (f) uses or writes any abusive, insolent, insulting, threatening, profane, indecent or obscene words while he or she is in the custody of a Controller; or
- (g) behaves in an offensive, threatening, insolent, insulting, disorderly or indecent manner while he or she is in the legal custody of a Controller, is guilty of an offence and upon conviction is liable to a term of imprisonment not exceeding 6 months or to a fine of \$200 or to both.
- (2) A person who, without lawful justification or excuse, loiters about any

place where persons serving in a Community Service Group are working, and refuses or fails to depart after being warned by a police officer or the Controller supervising the work, is guilty of an offence and upon conviction is liable to a fine not exceeding \$100.

30 Effect of subsequent convictions

- (1) Where a person serving a period of community service is convicted of another offence and is sentenced to life imprisonment or for a term of 1 year or more, his or her community service order shall terminate.
- (2) Where a person serving a period of community service is convicted of another offence and a sentence other than a sentence of life imprisonment or for a term of 1 year or more is imposed, the court by which he or she is sentenced or otherwise dealt with may, unless an application under Section 31 has been made to that or any other court, make an order terminating the community service order.
- (3) Where no order is made under subsection (2) and the person subject to the community service order is sentenced to imprisonment for less than 1 year:
 - (a) the period of the order shall continue to run while he or she is detained under the sentence of imprisonment; and
 - (b) upon his or her release from imprisonment he or she shall continue to be subject to the order for the unexpired residue of the period of the order.

31 Substituted sentence

- (1) Where a person performing community service is convicted of an offence other than offence against Section 29(1) which is punishable by imprisonment, whether or not a fine was also ordered, a probation officer may, unless his or her community service order has been terminated under Section 30, apply to the court to substitute another sentence for the community service order.
- (2) Notice of an application under subsection (1) shall be served on the person in respect of whom it is made.
- (3) Where a person performing community service is charged with an offence under Section 29(1), the probation officer may, before the hearing of the charge, give notice to the person charged that if he or she is convicted of the offence charged, the court will be asked to substitute another sentence for the community service order.
- (4) Where notice has been given under subsection (3) and the person is convicted of the offence charged, the probation officer may, unless the community service order has been terminated under Section 30, apply to the court to substitute another sentence for the community service order.
- (5) Where an application is dealt with by a Judge or magistrate other than the Judge or magistrate who made the community service order in respect of the offender, the court shall before determining the application make such inquiries as to the circumstances of the case as it considers reasonable, and may hear such evidence as it thinks relevant.
- (6) The court hearing the application may:

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- (a) if the order was made under Section 22, substitute for it any sentence, other than a community service order, which could have been imposed on the offender at the time his or her community service order was made; or
 - (b) if the order was made under Section 23, substitute for it a sentence to a term of imprisonment not exceeding the maximum term for which the offender could have been sentenced if he or she had been dealt with under another law instead of being ordered to perform community service.
- (7) Where a sentence is substituted for a community service order under this Section, the order is terminated.

PART 4 — PAROLE

32 Parole Board

- (1) A Parole Board is established.
- (2) The Board shall consist of:
 - (a) a person, appointed by the Minister, who is a non-Nauruan resident in the Republic, and who is not a judicial officer in the Republic, with tertiary qualifications in medicine, law, psychology, criminology or other discipline deemed by the Minister to be relevant, who shall be the Chairperson;
 - (b) the Secretary for Justice, *ex officio*, or his or her nominee; and
 - (c) not less than one nor more than 3 other members appointed by the Minister.

[subs (2) am Act 12 of 2009 s 3, opn 15 Oct 2009; Act 8 of 2011 s 12 and Sch 1[48], opn 15 Apr 2011]

- (3) A member referred to in subsection (2)(a) or (2)(c):
 - (a) shall be appointed for a term of up to 3 years;
 - (b) is eligible for reappointment; and
 - (c) may at any time be removed from office by the Minister for disability, neglect of duty or misconduct proved to the satisfaction of the Minister.

[subs (3) am Act 12 of 2009 s 3, opn 15 Oct 2009; Act 8 of 2011 s 12 and Sch 1[48], opn 15 Apr 2011]

- (4) The Minister may from time to time appoint a temporary member of the Board:
 - (a) while a member is incapacitated by illness, absent from the Republic, or other sufficient cause from performing the duties of his or her office; or
 - (b) during the absence of a member, other than the member referred to in subsection (2)(b), from the place at which a meeting of the Board is to be held.
- (5) No appointment of a temporary member and no acts done by him or her as such, and no acts done by the Board while a temporary member is acting as such, shall in any proceedings be questioned on the ground that:
 - (a) the occasion for a such appointment had not arisen or had ceased; or
 - (b) a permanent member of the Board acted as such while a temporary member appointed in his or her place remained in office.
- (6) There shall be paid to the members of the Board, other than the member referred to in subsection (2)(b), out of money appropriated by Parliament for the purpose, fees, allowances and travelling expenses.

33 Meetings and procedure of Board

- (1) The Board shall meet as often as required and at such times and places as it determines.
- (2) At a meeting of the Board, 3 members shall be a quorum.
- (3) Subject to this Act and any regulations made under it, the procedures of the Board are as determined by the Board.

[subs (3) am Act 8 of 2011 s 12 and Sch 1[48], opn 15 Apr 2011]

34 Jurisdiction and functions of Board

- (1) The Board shall have jurisdiction in respect of persons undergoing sentences of imprisonment and of persons released on probation under this Part after serving a sentence of imprisonment.
- (2) The functions of the Board are to:
 - (a) make recommendations to the Minister as to the release of an offender who has applied for parole under subsection (3);
 - (b) make recommendations to the Minister as to the discharge from probation of an offender who is on probation under this Part after undergoing imprisonment;
 - (c) make recommendations to the Minister as to the remission, suspension, or variation of any condition of the probation of an offender who is on probation under this Part after undergoing imprisonment, or as to the imposition on an offender of an additional condition of probation; and
 - (d) report to the Minister from time to time, when requested by him or her to do so, on a matter relating to a recommendation made under this Section.

[subs (2) am Act 12 of 2009 s 4, opn 15 Oct 2009]

- (3) Application for parole may be made to the Parole Board:
 - (a) in the case of an offender serving a sentence of life imprisonment, no earlier than 10 years from the date on which he or she commenced serving such sentence, and no more than once in every period of 12 months thereafter; and
 - (b) in the case of an offender serving a sentence of 12 months or more, other than a life sentence, no earlier than the date on which he or she has served one half of his or her sentence and no more than once in every period of 12 months thereafter.

[subs (3) subst Act 12 of 2009 s 4, opn 15 Oct 2009]

- (4) For the purposes of subsection (3), sentence means the sentence imposed by the court, and does not mean the effective sentence calculated under the provisions of the *Correctional Service Act 2009*.

[subs (4) subst Act 12 of 2009 s 4, opn 15 Oct 2009]

- (5) No application shall be made to the Parole Board and no application for parole may be entertained by the Parole Board other than applications made in accordance with subsection (3), and all applications shall comply with any requirements as to form and content prescribed by the Minister on the advice of the Parole Board and published in the Gazette.

[subs (5) subst Act 12 of 2009 s 4, opn 15 Oct 2009]

- (6) An offender who has applied for parole under subsection (3), shall be given an opportunity to appear before the Board and to state his or her case in person, and for that purpose the Board shall visit the prison in which the offender is detained or have the offender brought before it.

[subs (6) subst Act 12 of 2009 s 4, opn 15 Oct 2009]

- (7) [repealed]

[subs (7) rep Act 12 of 2009 s 4, opn 15 Oct 2009]

- (8) In considering a case under this Section, the Board shall have regard to:
 - (a) the safety of the public, and of a person or a class or classes of persons who may be affected by the release of the offender;
 - (b) the likelihood that the offender will re-offend before his or her sentence expires;

- (c) the welfare of the offender and his or her reformation and training in the prison in which he or she is detained;
 - (d) the class of sentence imposed by the court and the term of sentence;
 - (e) any recommendation made by the Chief Correctional Officer; and
 - (f) any representation made by the offender.
- (9) Where the Board recommends the release of an offender, it may recommend that the release be subject to such special conditions as it thinks fit.
- (10) The Board shall, not later than the 31st day of March in every year, send to the Minister a report on its proceedings during the year ended on the previous 31st day of December.

35 Release or discharge of offender

- (1) Where the Board recommends the release of a person from imprisonment or his or her discharge from probation, the Minister may direct:
- (a) the release of that person from imprisonment subject to the provisions of this Part and to such special conditions as he or she thinks fit; or
 - (b) as the case may require, the discharge of that person from probation.
- (2) A direction given by the Minister for the release from imprisonment of an offender may be revoked by the Minister at any time before the offender is released.

36 Released offender to be on probation

- (1) Where an offender who is detained under a sentence of imprisonment of 1 year or more, not being life imprisonment, is released from imprisonment under this Part before the expiry of the sentence, he or she shall be on probation:
- (a) from the time of his or her release until the expiry of the term of his or her sentence; or
 - (b) where the unexpired part of that term is less than a year, for 1 year.

[subs (1) am Act 12 of 2009 s 5, opn 15 Oct 2009]

- (2) Where an offender detained under a sentence of life imprisonment is released from imprisonment under this Part, he or she shall be on probation from the time of his or her release for the rest of his or her life.

- (3) [repealed]

[subs (3) rep Act 12 of 2009 s 5, opn 15 Oct 2009]

- (4) Where a person detained under a sentence of imprisonment is released on probation before the expiry of the sentence, the term of the sentence shall continue to run while he or she is on probation as if he or she were still serving the sentence, and the date of expiry of the sentence shall be determined accordingly.
- (5) A period of probation under this Part shall not be extended by virtue of the fact that the probationer is sentenced to imprisonment.
- (6) This Section shall apply to all releases under this Part, whether for the first time or after a recall of a probationer under Section 38.
- (7) For the purposes of this Section, cumulative terms of imprisonment shall be deemed to be one term.

37 Conditions of release

- (1) Where an offender is released on probation under this Part, the conditions in Section 7, other than in Section 7(a), shall apply in addition to any special conditions imposed under this Part.
- (2) In addition to the conditions specified in subsection (1), every release on probation under this Part shall be subject to the condition that the probationer shall, within 24 hours after his or her release, report to the probation officer under whose supervision he or she has been placed.
- (3) A person released on probation under this Part shall be issued with a copy of the direction for release setting out the conditions subject to which he or she has been released.

38 Recall of offenders

- (1) Where an offender detained under a sentence of life imprisonment is released from detention under Section 36, the Minister may, at any time while the offender is on probation, direct that the offender be recalled.
- (2) On the giving of a direction under subsection (1), the probation is automatically cancelled and the offender:
 - (a) may be arrested without warrant by a police officer; and
 - (b) shall continue to serve his or her sentence unless he or she is again released on the recommendation of the Board under this Part, or is released or discharged under any other written law.
- (3) Where an offender detained under a sentence of imprisonment of 1 year or more, not being life imprisonment, is released from detention under Section 36, or before the expiry of the term of his or her sentence, a Judge may at any time before the expiry of that term and while the offender is still on probation, on the application of a probation officer, direct that the offender be recalled.
- (4) On the giving of a direction under subsection (3), the probation is automatically cancelled and the offender shall be detained and shall serve the unexpired part of his or her sentence, unless he or she is again released on the recommendation of the Board under this Part or is released or discharged under any other written law.
- (5) A probation officer or a police officer may without warrant arrest a probationer who has been recalled under this Section for the purpose of taking him or her before a Judge to be dealt with in accordance with this Section.
- (6) The powers conferred by this Section may be exercised on such grounds as the Minister or the Judge, as the case may be, thinks fit, and whether or not the offender has committed a breach of the conditions of his or her probation.
- (7) On an application to a Judge under subsection (3):
 - (a) the probationer shall be entitled to be heard;
 - (b) he or she may be represented by a legal representative; and
 - (c) the application may be dealt with in chambers.
- (8) Where a Judge directs the recall of a probationer under this Section, he or she may issue a warrant in the prescribed form directing that the probationer be returned to a prison or other institution in which he or she may be lawfully detained.

39 Variation of probation and discharge

- (1) A probationer under this Part may at any time apply to the Board for the remission, suspension, or variation of any condition imposed by or under this Part.
- (2) A probationer under this Part may apply to the Board for his or her discharge from probation:
 - (a) if he or she is under sentence of life imprisonment, at any time after the expiry of 3 years from the time of his or her release on probation; or
 - (b) in any other case, at any time after the expiry of half of the period of his or her probation.
- (3) A probation officer may at any time apply to the Board for:
 - (a) the remission, suspension, or variation of any condition imposed on a probationer;
 - (b) the discharge from probation of a probationer; or
 - (c) the imposition of any additional condition in respect of a probationer.
- (4) On an application under this Section, the Board may make to the Minister such recommendations as it thinks fit and the Minister may give such directions as he or she thinks fit.
- (5) Where under this Section the Minister directs the discharge from probation of a probationer under this Part, the period of his or her probation shall expire on the date specified in the direction, and on that date his or her sentence, if still in force, expires.
- (6) Where an application is made under this Section for the remission, suspension, or variation of any special condition, the probation officer may in his or her discretion suspend the condition until the application has been heard and disposed of.
- (7) Notice of any direction given by the Minister under this Section shall be given by the Secretary to the probation officer.

40 Breach of conditions of probation

- (1) A probationer under this Part who contravenes or fails to comply with any condition of his or her probation is guilty of an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100.
- (2) Where a probation officer or a police officer believes on reasonable grounds that a probationer under this Part has committed a breach of any condition of his or her probation, he or she may arrest the probationer without warrant.
- (3) The conviction of a probationer under this Section does not limit the power of recall conferred by Section 38.

PART 5 — MISCELLANEOUS

41 Power of adjournment for inquiries as to suitable punishment

- (1) The court may from time to time adjourn the proceedings in a case against an offender after he or she has been convicted and before he or she has been sentenced or otherwise dealt with, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his or her case.
- (2) Where a case is adjourned under subsection (1), a Judge or magistrate having jurisdiction to deal with an offence of the same kind, whether or not he or she is the Judge or magistrate before whom the case was heard, may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates.

42 Regulations

The Cabinet may make regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties for offences against the regulations of a term of imprisonment not exceeding 3 months or a fine not exceeding \$100 or to both.

43 Transitional provisions as to existing sentences

[s 43 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019]

