



LAWS OF KENYA

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## **PROBATION OF OFFENDERS ACT, CAP 64**

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**CHAPTER 64**  
**PROBATION OF OFFENDERS ACT**

ARRANGEMENT OF SECTIONS

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## CHAPTER 64

## PROBATION OF OFFENDERS ACT

[Date of commencement: 20th December, 1943.]

**An Act of Parliament to provide for the probation of offenders**

[Cap. 79 (1948), Act No. 56 of 1955, Act No. 28 of 1961, L.N. 379/1957, L.N. 380/1957, L.N. 172/1960, L.N. 173/1960, L.N. 2/1964.]

**1. Short title and application**

This Act may be cited as the Probation of Offenders Act and shall apply to such areas, and from such date, as the Minister may by order, from time to time declare.

[L.N. 379/1957, L.N. 172/1960.]

**2. Interpretation**

In this Act—

“**probationer**” means a person, placed under supervision by a probation order;

“**probation officer**” means a probation officer appointed under section 16;

“**probation order**” means an order made under this Act placing a person under the supervision of a probation officer.

[Act No. 56 of 1955, S. 2.]

**3. Spent.****4. Power of court to permit conditional release of offenders**

(1) Where a person is charged with an offence which is triable by a subordinate court and the court thinks that the charge is proved but is of the opinion that, having regard to youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may—

- (a) convict the offender and make a probation order; or
- (b) without proceeding to conviction, make a probation order,

and in either case may require the offender to enter into a recognisance, with or without sureties, in such sum as the court may deem fit.

(2) Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the youth, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which, the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognisance, with or without sureties, in such sum as the court may deem fit.

(3) Before making a probation order under subsection (1) or (2), the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the provisions of the order.

(4) Where any offender against whom a probation order has been made commits a subsequent offence or fails to comply with any of the terms of the probation order, any sum the subject of any recognisance entered into by or on behalf of the offender may, in the discretion of the court, be forfeited.

## 5. Probation order

(1) A probation order shall have effect for such period, of not less than six months and of not more than three years, from the date of the order as may be specified therein, and shall require the probationer to submit during that period to the supervision of a probation officer appointed for or assigned to the district or area in which the probationer will reside after the making of the order, and shall contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.

(2) Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and here any such provision requires the probationer to reside in an institution the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Minister.

(3) The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation officer under whose supervision he is placed.

[Act No. 28 of 1961, Sch.]

## 6. Further provisions where probation order made

Where a person is placed by a probation order under the supervision of a probation officer, the order shall be without prejudice to the powers of the court, under any law for the time being in force, to order the offender to pay costs, and such damages for injury or compensation for loss as the court may think reasonable.

## 7. Commission of further offences by probationer

(1) If, after hearing information on oath, it appears to a judge or magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest.

(2) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court named therein, and the production to the court of a probation order, purporting to bear the signature of the judge or magistrate who made it, shall be *prima facie* evidence of the due making thereof.

(3) Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on ball, with or without sureties, until he can be brought or appear before the court by which the probation order was made.

(4) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, then—

- (a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
- (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence.

(5) Where a probationer in respect of whom a probation order has been made by a magistrate is convicted before the High Court of an offence committed while the probation order was in force, then—

- (a) if the probationer was not convicted of the original offence in respect of which the probation order was made, the High Court may convict him of that offence and may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence; or
- (b) if the probationer was convicted of the original offence in respect of which the probation order was made, the High Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence.

## **8. Failure by probationer to comply with probation order**

(1) If, after hearing information on oath, it appears to a judge or magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest.

(2) A summons or warrant under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made.

(3) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order, then—

- (a) without prejudice to the continuance in force of the probation order, the court may, if no moneys are liable to forfeiture by the probationer under sub-section (4) of section 4, impose on the probationer a fine not exceeding two hundred shillings; or
- (b) (i) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may

convict him and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or

- (ii) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence:

Provided that, where a court has, under paragraph (a), imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under section 7 of this section, the imposition of that fine shall be taken into account in fixing the amount of the sentence.

#### **9. Probation order: disqualification or disability**

(1) Where a person is convicted of an offence and is released under a probation order, his conviction for that offence shall, be disregarded for the purposes of any enactment by or under which any disqualification or disability is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence, or in respect of an offence committed after a previous conviction:

Provided that, if the probationer is subsequently sentenced for the original offence, this section shall cease to apply in respect of that offence, and he shall be deemed, for the purposes of any such enactment imposing disqualification or disability, to have been convicted on the date of sentence.

(2) Where a person is released on probation without the court having proceeded to conviction and he is subsequently convicted and sentenced for the original offence, then he shall be deemed, for the purposes of any enactment by or under which any disqualification is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after a previous conviction, to have been convicted on the date of the conviction and sentence.

#### **10. Transmission of documents when case is remitted to another court**

Where a probationer is committed to custody or released on bail by a magistrate until he can be brought or appear before the court which made the probation order, the magistrate shall transmit to that court such particulars of the case as he thinks desirable, and, where the probationer has been convicted of a subsequent offence by a magistrate, the Magistrate shall transmit to that court a certificate to that effect signed by him, and for the purposes of proceedings in the court to which it is transmitted any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.

#### **11. Amendment of probation order**

(1) Subject to the provisions of this section, where, on the application of a probationer or of the principal probation officer, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provisions should be inserted or cancelled, the court may by order amend the probation order accordingly:

Provided that no order shall be made under this section reducing the period of duration of the probation order, or extending that period beyond a period of three years from the date of the probation order.

(2) An order under subsection (1) may require a probationer to reside in an institution for any period not extending beyond twelve months from the date of that order, if the total period or the aggregate of the periods for which he is required to reside in any institution or institutions under the probation order does not exceed twelve months.

(3) The court shall, if it is satisfied on the application of the principal probation officer that the probationer has changed, or is about to change, his residence from the district or area named in the order to another district or area, by order vary the probation order by substituting for the reference to the district or area named therein a reference to the district or area where the probationer is residing or is about to reside, and shall transmit to the court for the new district or area all documents and information relating to the case, and thereupon the latter court shall be deemed for the purposes of this Act to be the court by which the probation order was made.

(4) An order under this section cancelling a provision of a probation order or substituting a new district or area for the district or area named therein may be made without summoning the probationer, but no other order under this section shall be made except on the application or in the presence of the probationer.

(5) Where an order is made under this section for the variation, insertion or cancellation of a provision requiring a probationer to reside in an institution the court shall forthwith give notice of the terms of the order to the Minister.

[Act No. 28 of 1961, Sch.]

## **12. Discharge of probation order**

(1) The court by which a probation order was made may, on the application of the probationer or of the principal probation officer, discharge the probation order, and where the application is made by the principal probation officer the court may deal with it without summoning the probationer.

(2) Where an offender in respect of whom a probation order has been made is subsequently sentenced for the offence in respect of which the probation order was made, the probation order shall cease to have effect.

## **13. Transmission of copies of orders for amendment or discharge of probation orders**

Where an order is made for the amendment or discharge of a probation order, the clerk or other officer of the court by which the order is made shall furnish two copies of the order to the principal probation officer, one copy of which shall be given by the principal probation officer to the probationer.

## **14. Selection of probation officers**

(1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the principal probation officer.

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

**15. Contributions towards institutions**

Such contributions may be made towards the establishment or maintenance of institutions for the reception of persons placed under the supervision of probation officers as Parliament may approve.

**16. Appointments**

(1) The Minister shall appoint—

- (a) a principal probation officer, who shall organise and supervise the probation service in accordance with rules made under this Act;
- (b) a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as may be prescribed by rules made under this Act.

(2) The Minister\* may appoint a probation committee or probation committees, consisting of such persons as the Minister shall think fit, who shall review the work of probation officers in individual cases and perform such duties in connection with probation as may be prescribed by rules made under this Act.

[L.N. 379/1957, L.N. 380/1957, L.N. 172/1960.]

**17. Rules**

The Minister may make rules prescribing—

- (a) the duties of the principal probation officer;
- (b) the duties of probation officers;
- (c) the constitution and duties of a probation committee or probation committees;
- (d) the form of records to be kept under this Act;
- (e) what shall be an institution for the purposes of this Act;
- (f) the remuneration of any person appointed to carry out any duties under this Act, and the fees and charges to be made for any act, matter or thing under this Act to be done or observed;
- (g) generally for carrying out the purposes and provisions of this Act.

[L.N. 380/1957, L.N. 173/1960.]

**18. Delegation of powers**

The principal probation officer may in writing delegate all or any of his powers, duties or functions in relation to any probationer, to any probation officer who is responsible for the supervision of the probationer.

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\* Powers under section 16 (2) to appoint chairmen and members of Probation Case Committees delegated to the Permanent Secretary (L.N. 69 of 1968)



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**CHAPTER 64**  
**PROBATION OF OFFENDERS ACT**  
SUBSIDIARY LEGISLATION

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*List of Subsidiary Legislation*

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**APPLICATION OF ACT UNDER SECTION 1**

[Cap. 79 (1948), Sub. Leg. Proc. 29/1950, Proc. 10/1952, L.N. 475/1957, L.N. 617/1960, L.N. 618/1960, L.N. 619/1960.]

The Act applies to the following areas—

- The Central Province.
  - The Coast Province.
  - The Nyanza Province.
  - The Rift Valley Province.
  - Kajiado District.
  - Kitui District.
  - Machakos District.
  - Nairobi Area.
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**PROBATION OF OFFENDERS (CENTRAL PROBATION COMMITTEE) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation.
  2. Establishment of Central Probation Committee.
  3. Constitution of Committee.
  4. Duties of the Committee.
  5. Meetings of the Committee.
  6. Procedure at meetings.
  7. Quorum of the Committee.
  8. Voting.
  9. Records.
  10. Committee may regulate procedure.
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[Subsidiary]

## PROBATION OF OFFENDERS (CENTRAL PROBATION COMMITTEE) RULES

[L.N. 206/1958, L.N. 730/1961, L.N. 29/1964, L.N. 206/1966, L.N. 87/1973.]

### RULES UNDER SECTIONS 16 (2) AND 17

#### 1. Citation

These Rules may be cited as the Probation of Offenders (Central Probation Committee) Rules.

#### 2. Establishment of Central Probation Committee

There is hereby established a probation committee, to be known as the Central Probation Committee, hereinafter referred to as the Committee.

#### 3. Constitution of Committee

(1) The Committee shall consist of—

- (a) a chairman, who shall be the Chief Justice; and
- (b) ten members appointed by the Minister representing respectively—
  - (i) the Ministry for the time being responsible for probation services;
  - (ii) the Ministry for the time being responsible for labour matters;
  - (iii) the Ministry for the time being responsible for social services;
  - (iv) the Kenya Police;
  - (v) the Nairobi City Council;
  - (vi) the Christian Council of Kenya;
  - (vii) the Roman Catholic Church;
  - (viii) the Salvation Army;
  - (ix) the Nairobi Chamber of Commerce; and
- (c) not more than six other members appointed by the Minister.

(2) The members of the Committee appointed under subparagraph (c) of paragraph (1) shall hold office for three years, but shall be eligible for reappointment.

(3) Any member of the Committee appointed under subparagraph (c) of paragraph (1) may at any time resign his office by notice in writing addressed to the secretary of the Committee, who shall forward it to the Minister.

(4) The principal probation officer shall be secretary of the Committee.

(5) All appointments and resignations of members appointed under subparagraph (c) of paragraph (1) shall be notified in the *Gazette*.

#### 4. Duties of the Committee

The duties of the Committee shall be—

- (a) to make recommendations to the Minister concerning the allocation of the services of probation officers to various areas;
- (b) to receive and consider the recommendations of the probation case committee of any area concerning the needs or working of the probation service, and to advise the Minister on all matters arising therefrom, other than administrative matters;
- (c) to make recommendations to the Minister relating to the duties of the Committee and of Probation Case Committees;

[Subsidiary]

- (d) to advise the Minister on any question of policy and upon any other matter relating to the probation service as he may refer to it for advice.

**5. Meetings of the Committee**

The Committee shall hold a meeting for the transaction of general business at least once in every three months and at such other times as the chairman may direct.

**6. Procedure at meetings**

The chairman shall preside at every meeting at which he is present, and, in the case of his temporary absence, the members present and constituting a quorum shall elect a chairman from among their number.

**7. Quorum of the Committee**

A quorum of the Committee shall be five.

**8. Voting**

- (1) The decisions of the Committee shall be by a majority of votes.
- (2) The chairman shall have a casting as well as a deliberative vote.

**9. Records**

The secretary shall maintain records of the proceedings of the Committee and perform such other duties as may be assigned to him by the Committee.

**10. Committee may regulate procedure**

Subject to the provisions of these Rules, the Committee shall have power to regulate its own proceedings.

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**PROBATION OF OFFENDERS (CASE COMMITTEES) RULES**

ARRANGEMENT OF RULES

*Rule*

1. Citation.
  2. Establishment of committees.
  3. Constitution of committees.
  4. Duties of the committees.
  5. Meetings of committees.
  6. Procedure at meetings.
  7. Quorum of the committee.
  8. Voting.
  9. Records.
  10. Committees may regulate procedure.
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[Subsidiary]

## PROBATION OF OFFENDERS (CASE COMMITTEES) RULES

[L.N. 206/1958, L.N. 411/1959, L.N. 426/1959, L.N. 644/1960, L.N. 383/1962.]

### 1. Citation

These Rules may be cited as the Probation of Offenders (Case Committees) Rules.

### 2. Establishment of committees

(1) There are hereby established the probation case committees set out in the first column of the Schedule.

(2) The area in respect of which each committee is established is set out in the second column of the Schedule.

### 3. Constitution of committees

(1) Each probation case committee, hereinafter referred to as a committee, shall consist of a chairman and seven members appointed by the Permanent Secretary, and the principal probation officer, who shall be an *ex officio* member.

(2) The members of a committee, other than *ex officio* members, shall hold office for three years, but shall be eligible for reappointment.

(3) Any member of a committee may at any time resign his office by notice in writing addressed to the secretary who shall forward it to the Permanent Secretary.

(4) A probation officer stationed within the area in respect of which a committee is established shall be secretary of the committee.

(5) All appointments to and resignations from a committee shall be notified in the *Gazette*.

### 4. Duties of committees

The duties of a committee shall be—

- (a) to examine and review the work of probation officers in relation to individual cases;
- (b) to receive and consider reports from probation officers;
- (c) to make or direct the making of any communication which it may be necessary to make to the court;
- (d) to make or direct the making to the Central Probation Committee of recommendations concerning the probation service;
- (e) to advise and assist probation officers in the execution of their duties;
- (f) to ensure that probation officers perform their duties in a satisfactory manner.

### 5. Meetings of committees

A committee shall hold a meeting for the transaction of general business at least once in every six months and at such other times as the chairman may direct.

### 6. Procedure at meetings

The chairman shall preside at every meeting at which he is present, and, in the case of his temporary absence, the members present and constituting a quorum shall elect a chairman from among their numbers.

**7. Quorum of a committee**

A quorum of a committee shall be three.

**8. Voting**

- (1) The decisions of a committee shall be by a majority of votes.
- (2) The chairman shall have a casting as well as a deliberative vote.

**9. Records**

The secretary shall maintain records of the proceedings of a committee and perform such other duties as may be assigned to him by a committee.

**10. Committees may regulate procedure**

Subject to the provisions of these Rules, a committee shall have power to regulate its own proceedings.

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**SCHEDULE**

[Rule 2]

<i>Name of Committee</i>	<i>Area in respect of which Committee appointed</i>
Nairobi Probation Case Committee .....	Nairobi Area.
Mombasa Probation Case Committee .....	Mombasa District.
Machakos Probation Case Committee .....	Machakos District.
Nakuru Probation Case Committee .....	Nakuru District.
Thika Probation Case Committee .....	Thika District.
Kericho Probation Case Committee .....	Kericho District.
South Nyanza Probation Case Committee .....	South Nyanza and Kisii District.
North Nyanza Probation Case Committee .....	North Nyanza District.
Central Nyanza Probation Case Committee .....	Central Nyanza District.
Kiambu Probation Case Committee .....	Kiambu District.
Uasin Gishu County Probation Case Committee .....	Uasin Gishu District.
Trans Nzoia Probation Case Committee .....	Trans Nzoia District.
Naivasha Probation Case Committee .....	Naivasha District.
Laikipia Probation Case Committee .....	Laikipia District.
Nyeri Probation Case Committee .....	Nyeri District.

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**PROBATION OF OFFENDERS RULES**

[Cap. 79 (1948), Sub. Leg. G.N. 806/1952, L.N. 409/1962.]

**RULES UNDER SECTION 17**

1. These Rules may be cited as the Probation of Offenders Rules.
2. It shall be the duty of the principal probation officer—
  - (a) to make such arrangements and to give such directions as may be necessary for the purpose of giving effect to probation orders;
  - (b) to train staff for the Probation Service;
  - (c) to act as secretary to the Central Probation Committee and to advise the Committee on all technical matters relating to the probation system;
  - (d) to act as liaison officer between the Central Probation Committee and the Commissioner of Prisons and any other authority or body concerned with the treatment of juveniles in all matters, and especially in matters relating to probation, approved schools and approved homes;
  - (e) to promote co-operation between the Probation Service and the Police Force and any other voluntary society affording appropriate social services;
  - (f) generally to organise and supervise the Probation Service and to promote the efficient working thereof.
3. It shall be the duty of a probation officer—
  - (a) to make such preliminary inquiries as the court may direct into the antecedents, home surroundings and other circumstances of an accused person;
  - (b) to undertake the supervision of such probationers as may be assigned to his charge;
  - (c) subject to any directions given by the court (whether in the probation order or otherwise), to visit the home of every such probationer and make inquiries as to his conduct, mode of life and employment;
  - (d) to keep in close touch with the probationer and to arrange to meet him at least once a fortnight during the first six months of the period specified in the probation order and thereafter at such intervals as he may deem necessary, having regard to the conduct, mode of life and needs of the probationer;
  - (e) if the probationer is a child attending school, to make periodical inquiries of the principal of the school concerned as to the probationer's attendance, conduct and progress:  
Provided that the probationer shall not, unless he is actually residing at the school, be personally interviewed by the probation officer on the school premises;
  - (f) to ensure that the probationer understands the terms and conditions of the probation order, and to endeavour by encouragement, persuasion and warning to secure his observance of them;
  - (g) to advise, assist and befriend the probationer and, where necessary, endeavour to find him suitable employment;
  - (h) if the probationer is under eighteen years of age, to endeavour to secure his association with some suitable youth movement or other welfare organisation;

**[Subsidiary]**

- (i) to keep proper and up-to-date records in respect of every probationer for whom he is responsible, including notes of visits and interviews and relevant details as to the conduct and progress of the probationer.

**4. (1) A probation officer shall report—**

- (a) to the court, in accordance with any directions given by the court in a probation order or otherwise;
- (b) to the appropriate case committee, on the conduct, mode of life and general progress of every probationer placed under his supervision;
- (c) to the court, the principal probation officer and the appropriate case committee upon the failure of a probationer placed under his supervision to observe any of the conditions of the probation order relating to him;
- (d) to the appropriate case committee, upon any case under his supervision in relation to which he receives a request for a report.

(2) The reports of a probation officer under this rule shall be made at such intervals and in such manner as the principal probation officer may direct, and shall not be made in open court or otherwise published.

**5. (1)** When the supervision of a probationer is transferred from a probation officer attached to one area or part of an area to the probation officer of some other area or part of an area, the record relating to the probationer shall be forwarded to the probation officer of that other area or part of an area, and all subsequent particulars and reports relating to the probationer shall be filed at the office of the probation officer to whose supervision the probationer has been transferred.

(2) While any such probation order remains in force, the probation officer attached to the area or part of an area wherein the court is situated may, from time to time, call upon the probation officer to whose supervision the probationer has been transferred for a report as to the progress and general mode of life of the probationer, and the probation officer upon receiving that report shall convey the substance thereof to the appropriate case committee.

**6.** A probation officer shall not wear any uniform or badge distinctive of his office.

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**PROBATION OF OFFENDERS (INSTITUTIONS) RULES**

[G.N. 1887/1953, G.N. 573/1954, L.N. 367/1958, L.N. 10/1961.]

1. These Rules may be cited as the Probation of Offenders (Institutions) Rules.
2. The premises specified in the Schedule shall be institutions for the purposes of the Act.

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**SCHEDULE**

[Rule 2.]

1. The premises known as the Probation Hostel, Likoni, Coast Province.
  2. The premises known as the Probation Hostel, Nakuru.
  3. Houses Nos. 543 to 548 inclusive, of the Mbotela African Housing Estate, Nairobi.
  4. Four rooms, Block No. 127, Bondeni, Estate III, Nakuru.
  5. British Legion Hall, Kericho.
  6. Plot No. 9, Housing Estate, Section XII, off Kakamega Road, Kisumu.
  7. Numbers 95 and 96, Block "F", Macharia Estate, Eldoret West, Eldoret.
  8. Plot 102, Section 1, Mainland South, Mombasa.
  9. The premises situated adjacent to the Jogoo Road Police Station, Kaloleni, known as the Nairobi Probation Hostel.
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