

**Process to be gone through by an Offender
before and after a Probation Order is issued by the Court**

Statutory provision

According to section 3(1) of the Probation of Offenders Ordinance (Cap. 298), where a court by or before which a person* is tried for an offence (not being an offence the sentence for which is fixed by law) considers that having regard to the circumstances, usually based on the social enquiry report on the offender, the court may, after conviction, make a probation order. A probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of other offences (s.3(2) of Cap. 298).

Before a probation order is issued

2. A probation officer shall make such preliminary inquiries, including inquiries into the home surroundings, as a court may direct in respect of any offender in whose case the question of the making of a probation order may arise. (r.16 of Probation of Offenders Rules, Cap.298 sub.leg., (the Rules)). In the course of such inquiries, the probation officer will assess the circumstances, including the nature of the offence, the character and attitude of the offender, the support network, as well as a feasible rehabilitation plan for the offender.

3. In working with an offender with drug dependence problem, the probation officer will discuss with him/her the drug withdrawal treatment alternatives, and if necessary, provide information on voluntary drug withdrawal treatment programmes in the community which are relevant to his/her rehabilitation. If the offender agrees to receive such voluntary drug withdrawal treatment and the probation officer also considers this the best option, the programme will become part of the rehabilitation plan. For young offender aged under 16, the parent or guardian has to be

* As a person under the age of 7 does not have criminal liability, a probation order can only apply to a person of age 7 or above.

involved in formulating the rehabilitation plan and his/her agreement to the plan will be sought. The completed social inquiry report of the offender, including the recommended rehabilitation plan, will then be submitted to the court for consideration.

4. If the court considers that it will be in the offender's best interest to place him on probation supervision, before making a probation order, the court shall explain to the offender in a language understood by him/her the effect of the order, including any additional requirements proposed to be inserted and the consequences of breaching the order. If the offender is 14 years or above, the court shall make the order only if the offender expresses his/her willingness to comply with the requirements thereof (s.3(4) of Cap. 298). For cases with drug dependence problem, if the offender agrees to undergo a voluntary drug withdrawal treatment programme, a condition along the line that "he/she shall receive and complete a drug withdrawal treatment programme and abstain from drug" will normally be inserted in the probation order.

After a probation order is issued

5. After an offender is placed on probation, the responsible probation officer shall, if so requested by the supervising court, from time to time report to such court upon the probationer's mode of life and generally upon his progress (r.20(1) of Probation of Offenders Rules, Cap. 298). Where a probationer fails to comply with any of the requirements of a probation order, the probation officer shall report the fact to the supervising court (r.20(3) of Probation of Offenders Rules, Cap. 298).

6. If at any time during the probation period it appears on information to a magistrate that the probationer has failed to comply with any of the requirements of the order, the magistrate may issue a summon requiring the probationer to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest. (s. 5(1) of the Probation of Offenders Ordinance, Cap. 298).

7. In the course of probation supervision, should a probationer exhibit re-offending behaviour or fail to comply with the requirements

stipulated in the probation order, the probation officer will assess the circumstances and the prognosis of the case including the probationer's motivation for rehabilitation before taking court action. The probation officer may discuss with the probationer on any alternative plan as appropriate if it is found that the originally agreed plan is no longer suitable for the offender's rehabilitation.

8. If it is proved to the satisfaction of the magistrate's court before which the concerned probationer has failed to comply with any of the requirements of the probation order, the court may, without prejudice to the continuance of the probation order, caution him/her or impose on him/her a fine not exceeding \$500, or may deal with the probationer for the original offence (s.5 (2) of the Probation of Offenders Ordinance, Cap. 298).