

Data Protection

Code of Practice

Probation Service Policy Document October 2014

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Document Amendment History

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FOREWORD

I am very happy to be able to formally approve this Code of Practice under the terms of Section 13 of the Data Protection Acts 1988 and 2003.

The Code is the result of intensive work by the Probation Service and its staff, working in close co-operation with my Office. It is designed to give operational meaning to the principles of data protection set out in European and National law.

I am confident that the Code will make a significant contribution to improving knowledge and understanding of data protection within the Probation Service. I intend to continue to work closely with the Probation Service and their staff to ensure that the guidance set out in the Code is followed in daily practice.

Billy Hawkes

Data Protection Commissioner

Section 1.0 - Introduction

The Probation Service is an agency of the Department of Justice and Equality committed to working to achieve the high level objectives and policy goals of the Department in working for safer and fairer communities. We work closely with the Courts Service, the Irish Prison Service, An Garda Síochána, the Irish Youth Justice Service and many organisations within the community. Information in the form of accumulated data is essential to the management of administration and operational service delivery. In order to provide a co-ordinated and multi agency approach to service delivery, agencies such as the Probation Service need to share personal data. The sharing of information between relevant stakeholders should be in accordance with the principles of data protection and in the main will occur with the consent of the individual.

The Probation Service has a responsibility to hold personal data collected securely and to use it both effectively and ethically. There is a balance to be struck between an individual's right to privacy and the legitimate business requirements of our organisation.

It is critical that probation staff work to the highest attainable standards. Our integrity includes both the way in which we conduct ourselves and the way in which we collect, hold and manage data, ensuring it is compliant with relevant legislation.

The aim of this Code of Practice is to ensure that each employee of the Probation Service has an understanding of the concepts of Data Protection and is aware of their own responsibilities under the Data Protection Acts 1988 and 2003. This, in turn, will assist the Probation Service in its compliance with the Acts as an organisation.

Protecting our data is common sense. We need to ensure that data gathered and processed by the Probation Service is compliant with Data Protection legislation. The reading, understanding and application of this Code by all employees will go a long way towards meeting this requirement.

This policy is a statement of the Probation Service's (as a Data Controller) commitment to protect the rights of individuals in accordance with the data protection legislation.

Vivian Geiran

Director

Section 2.0 - Registration with the Office of the Data Protection Commissioner

Under the Data Protection Acts 1988 and 2003, certain categories of data controllers (those who control the contents and use of personal data) and certain categories of data processors (those whose business consists wholly or partly in processing such data for others) must register with the Data Protection Commissioner (DPC).

The register of data controllers and processors is a public register intended to bring transparency to the processing of personal data. All register entries are available on the DPC website, www.dataprotection.ie. A detailed list of all personal data processed by the Probation Service is available on the public register held by the Data Protection Commissioner's Office and is attached at Section 5.0.

Section 3.0 - Obligations of the Probation Service

The policy of the Probation Service is to implement the key responsibilities contained in the Data Protection Acts 1988 and 2003.

3.1 Key Responsibilities:

a) Obtain and process information fairly.

The Probation Service is an agency of the Department of Justice and Equality. On behalf of the Department of Justice & Equality and in conjunction with the Courts Service, the Irish Prison Service, An Garda Síochána and the wider community, we provide high quality assessment of offenders and a professional and effective management of services and supports to bring about positive change in the behaviour of offenders.

We provide probation supervision, community service, community return, offending behaviour programmes and specialist support services to both adult and young offenders, which aim to stop them committing further offences.

The Probation Service will obtain and process all information fairly in accordance with the fulfillment of its functions and its legal basis for collecting and retaining data as listed in Appendix 3. Information will not be used or disclosed except as provided for by law.

b) Keep information for specified, explicit and lawful purposes.

The Probation Service will keep data for purposes that are specific, lawful and clearly stated and the data will only be processed in a manner compatible with these purposes.

All data collected by the Probation Service is listed in Section 5.0. The collection of this data is with the consent of the client and its use is limited to that provided for in the relevant legislation (see Appendix 3).

c) Use and disclose information only in ways compatible with these purposes.

Personal information collected by the Probation Service for the purpose of supervision and management of offenders in the community may not be divulged to third parties, except with the clients consent or where provided for in law (see Appendix 3). (Data collected by the Probation Service is listed on Page 15, Section 5.2.)

Probation Service staff are instructed through Induction Training on their Data Protection responsibilities and current operational procedures. Any updates are placed on the Probation Service Intranet.

d) Keep information safe and secure.

The Probation Service will take appropriate security measures against unauthorised access to, or alteration, disclosure or destruction of the data and against their accidental loss or destruction. The Probation Service acknowledges that high standards of security are essential for processing all personal information. These provisions include the following which will be subject to an annual audit to ensure compliance;

- Ensuring staff are made aware of their Data Protection obligations.
- Maintaining the Probation Service Information Security Policy and ensuring that all staff are made aware of this policy.
- Ensuring access to information is restricted to authorised staff in accordance with management policy;
- Ensuring computer systems are password protected and that passwords are changed on a regular basis;
- Non-disclosure of personal security passwords to any other individual (including other employees);
- Keeping information on computer screens and paper files hidden from callers to offices;
- Ensuring that staff do not have access to CD/USB drives unless there is a clear business need.
- Having adequate security measures and policies in place in relation to the use of laptops and other mobile storage devices;
- Ensuring that personal data is not stored on portable devices except in essential circumstances. Where deemed essential, data will be encrypted and a record kept of the nature and extent of the data and why it is being stored on a portable device. Arrangements will be put in place to fully delete the data on the portable device when it is no longer being used;
- Ensuring that personal data is protected by strong encryption when being stored on portable devices or transferred electronically (including via email);
- Having appropriate facilities in place for disposal of confidential waste;
- Restricting internal access to premises and keeping premises secure, especially when unoccupied;
- Ensuring that regular back-ups are scheduled and back-up tapes are stored securely and off-site.
- Restricting access to IT Comms Room to nominated personnel only;

- Keeping audit logs in relation to changes, additions and deletions on ICT systems;
- Restricting access to CCTV systems and recordings in accordance with the Probation Service CCTV policy.

All queries regarding the operating of these provisions should be addressed to the Data Protection officer.

e) Keep information accurate, complete and up-to-date.

The Probation Service will endeavor to ensure high levels of data accuracy and completeness and to ensure that personal data is kept up-to-date.

Probation Service staff are aware of their responsibilities in this regard and computer procedures are implemented to ensure high levels of accuracy (In some instances, changes to certain data entries are tracked). Staff are reminded on a regular basis of their Data Protection responsibilities and there are regular reviews of operational procedures.

Under Section 6 of the Data Protection Acts 1988 and 2003, individuals have a right to have inaccurate factual information corrected. This can be done by contacting the officer below:

Data Protection Officer
Haymarket
Smithfield
Dublin 7.

Ph: 353-1-8173600

f) Ensure that information is adequate, relevant and not excessive.

Personal data held by the Probation Service will be adequate, relevant and not excessive in relation to the purpose/s for which it is kept.

Probation Service staff are instructed through Induction Training on their Data Protection responsibilities and operational procedures. All information collected is required to be adequate for the purpose of the management of offenders, the minimum required and not excessive for the purpose for which it is obtained. Guidelines are available on the Probation Service intranet.

g) Retain information for no longer than is necessary.

The Probation Service will have a defined Retention & Disposal Policy on retention periods for personal data and appropriate procedures in place to implement any disposals. These procedures are currently being drafted and will be available on the staff portal.

The Probation Service is legally obliged to seek authorisation from the Director of the National Archives in relation to the destruction of Probation Service records. All records

will be retained until permission is obtained and this will inform the Probation Service Retention & Disposal Policy.

Retention & disposal of data in relation to Human Resources, Employment or Financial matters are governed by the relevant legislation and in line with the Department of Justice guidelines.

h) Give a copy of personal data to an individual, on request.

The Probation Service will have procedures in place to ensure that data subjects can exercise their rights under the Data Protection legislation. (See Page 17 Section 6.) These procedures are available on the staff portal and on the Service website. All access requests are dealt with by the Data Protection Officer.

All Probation Service staff are made aware of their Data Protection responsibilities and have a responsibility to ensure that data they access, manage and control as part of their duties is carried out in accordance with the Data Protection Acts.

3.2 Good Practices

The Probation Service is committed to developing best practice in respect of the personal data it collects and/or controls. In carrying out good practices the Probation Service will:

- Implement the key responsibilities contained in the data protection legislation;
- Safeguard the privacy rights of individuals;
- Protect the personal data that it collects, processes and retains;
- Release personal data under the Data Protection Acts only when permitted by law;
- Manage, co-ordinate and develop, in an effective manner, the implementation of Data Protection legislation in the Probation Service. This includes the management of responses to access requests, the restriction of access where required, and the on-going communication between the Data Protection Unit and offices to ensure that particular practices, proposals and developments are fully compliant with Data Protection legislation;
- Liaise and co-operate with and support the Data Protection Commissioner's Office on issues affecting Data Protection in the Probation Service;
- Liaise with other Government Departments/Offices on Data Protection matters of mutual interest;
- Ensure that the Probation Service staff are aware of their responsibilities under the Data Protection Acts;
- Liaise with the Data Protection Commissioner's Office for guidance on specific cases;
- Use common sense approach when recording comments about individuals and/or groups;
- Make sure that any data displayed on PC screens, papers and computer print-outs is not legible to the public unless they are entitled to see relevant details;
- Ensure all outsource companies, consultants and/or contractors have signed a confidentiality agreement to comply with the Probation Service's obligations in relation to Data Protection legislation. (See example in Appendix 1).

*** This Policy will be reviewed regularly in light of any legislative or other relevant regulations or in the event of a breach.**

Section 4.0 - Responsibility of Employees

The Director has a duty to:

- Ensure that the Probation Service complies with the requirements of the Data Protection Acts 1988 and 2003.

The Data Protection Officer is responsible for:

- The development and oversight of a Data Protection Policy.
- Oversight and management of breaches.
- To register and update annually the Probation Service entry on the Data Protection Commissioner's website.
- To collate and respond to requests for information from members of the public
- To provide support and guidance to Probation Service staff on any Data Protection matters.
- To ensure that training, advice and guidance on good records management practice is provided to all staff.

All Senior Managers are responsible for:

- Ensuring that staff in their areas adhere to the Probation Service Data Protection Code of Practice and to the requirements of Data Protection legislation.
- Investigating and reporting on any breaches in their area.
- Performing an Audit each year to ensure compliance with this Code of Practice

All Office Managers should:

- Ensure compliance with the Probation Service Data Protection Code of Practice within their team.
- Co-ordinate activities aimed at ensuring that information is recorded, stored, managed and disposed of both effectively, legally and in keeping with Probation Service policies and guidelines.
- Ensure any outsource companies, consultants and/or contractors have signed a Confidentiality Agreement prior to issuing any Probation Service data.

All members of staff are responsible for:

- Documenting their actions and decisions on records and for maintaining the records in accordance with good records management practice.
- Ensuring that any Data Protection requests are forwarded to the Data Protection Officer immediately.
- Maintaining accurate and up-to-date information.
- Complying with the Probation Service Information Security Policy and the information listed there-in.
- Observing computer security procedures (in the Probation Service Acceptable Usage Policy).
- Ensuring that all physical security measures are adhered to.

4.1 Contracted Staff

All contractors or any staff working for/on behalf of the Probation Service who handle personal data in connection with the Probation Service, must also operate in accordance with this policy and pursuant to written contractual agreement, that confirms security measures, will be complied with (see Appendix 1).

4.2 Protocol for reporting any breaches

The Probation Service has obligations under the Data Protection Acts 1988 and 2003 in relation to the collection, processing, storage, use and disclosure of personal information. One of the key responsibilities of the legislation is to keep information safe and secure. Section 2(1)(d) of the Act states;

“appropriate security measures shall be taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of, the data, in particular where the processing involves the transmission of data over a network and against all other unlawful forms of processing”.

Any breach of procedure should be immediately notified in accordance with the Probation Service Data Protection Breach Management Policy.

Information on the Data Protection Commissioners Code of Practice for reporting breaches is available at the link below;

[http://www.dataprotection.ie/docs/7/7/10 -
Data Security Breach Code of Practice/1082.htm](http://www.dataprotection.ie/docs/7/7/10-_Data_Security_Breach_Code_of_Practice/1082.htm)

4.3 Enforcement

Non-compliance with this policy document will be treated in the same way as non-compliance with other regulations and may, in certain circumstances, lead to the disciplinary code being invoked. Circular 14/2006 refers which is available on www.codpearsanra.gov.ie.

Section 5.0 - Data held by the Probation Service

All data held by the Probation Service which contains personal data is registered on the Data Protection Commissioner's website – www.dataprotection.ie.

5.1 Description of Data

Description	<u>Application:</u>	<u>Description of Personal Data</u>
<p>Briefly list/describe each application of personal data, together with the types of personal data (e.g. name, address, date of birth, email address, staff ID number) kept or used in connection with that application.</p> <p>Give full details also of any personal data kept in relation to the purpose(s), but not normally associated with any of the applications you have listed.</p>	<p>Case Tracking System (CTS)</p>	<p>This database holds details of offenders that are referred to the Probation Service.</p> <p>Case Tracking System Client Details;</p> <p>Probation Service file number, court referral number, first name, surname, alias, current address, previous addresses, telephone number, mobile phone number, e-mail address, date of birth, age, age now, age on referral, child/adult, status of file (active/inactive).</p> <p>Court details, case allocation details, offence/remand details, report type details, details of decision, supervision details, details of breaches & revocations, termination details, revision history of offenders details, additional remands or notes on court hearing, community service details, author of community service report where report is sought after probation report, conclusion/recommendations, conclusion code.</p> <p>Officer Reports; Personal details, family details, background, education, employment, medical information, contacts, offences, sensitive data.</p> <p>Juvenile Offenders; Matters court considered by family conference, previous Probation service contact, court date for action plan, contact details for mother/father/guardian, namely; name, address, phone number.</p> <p>Victim Information; Name, address, gender, home telephone number, work telephone number, mobile phone number,</p>

		<p>e-mail address, availability, status (individual/small business/corporation) & comments.</p> <p>Prison Offender Details; Referral reason, residency status, nationality, PRIS number, location in prison, committal date, custodial status, nature of offences, length of sentence, estimated date of release, next of kin details (name, address, phone numbers), family, children, significant relationship, education details, employment history, medical history and post release supervision details. This database holds details of employees of the Probation Service, namely;</p> <p>Office Details – staff id, signature id, grade, job title, employment type (permanent/temporary), function, region, telephone number, extension, work mobile number, office address, office location, floor, room number and CTS Details.</p> <p>Personal Details – title, officer name, middle initial, date of birth, home telephone number, personal mobile number, home address, next of kin (name & phone number).</p> <p>Employment Record – date of appointment, prison service for probation officers (start date location & end date), date of promotion, date of job-sharing, date of career break, date of secondment, date of special leave, date of retirement, date of resignation, transfer applications, secondment applications (dates granted/refused).</p> <p>Other Details Flexi-time Records, staff leave requests, PMDS forms, training requirements and requests, photographs of staff and qualifications and also details of internal vacancies and promotion panels.</p> <p>Funded Projects Funded Projects Database: Annual Business Plan, Financial Details,</p>
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		<p>Statistical returns, Details of participants which include: name, date of birth, age, gender, start date, completion date, nationality, probation status, educational status, vocational status, addiction status, services undertaken by participant, counselling & offender re-integration projects, accommodation projects, successful completions, progression, certification, name of referring agency, name of referring probation officer if applicable, was participant previously on probation but bond now expired.</p>
	Mobile Phone Inventory	<p>This holds details of mobile phones issued to staff which includes – staff member name, location, Senior Probation Officer, work mobile phone number, sim card number.</p>
	Community Service Supervisors Pay	<p>Salaries for Community Service Supervisors are no longer paid directly by the Probation Service however, historical data is stored for reference purposes which includes – staff member name, home address, work mobile number, employment details, salary details including PPS Number.</p>
	E-mail System	<p>Individual e-mail accounts, keeping the e-mail addresses of correspondents, along with such material as may be included in the bodies of e-mails. Kept in accordance with the Probation Service Acceptable Usage Policy.</p>
	Document Library	<p>Individual and team based document repository. Stores documents which may contain such material as may be included in reports, policy and strategy statements, spreadsheets, presentations etc. Kept in accordance with the Probation Service Acceptable Usage Policy.</p>
	Management Information System	<p>This application contains statistical information relating to all details kept on the Case Tracking System.</p>
	Non Offender Related	<p>This application contains lists of Local Authorities, Accommodation Agencies</p>

	Management Application (NORMA)	and Services for homeless people. Also contains lists of Projects detailing referrals from the Probation Service which includes; Probation Service number, name, date of birth, gender, referring Probation Officer, date commenced and date completed/terminated.
	Security	CCTV cameras operate in all Probation Service offices for the purpose of security and protocols are included in the Probation Service CCTV Policy.

5.2 Disclosures of Data

Information regarding offenders (from the Case Tracking System) may be shared provided that there is a legitimate request for sharing (i.e.; under legislation provided in Appendix 3 OR that the consent of the Data Subject has been obtained OR the data requested does not personally identify the data subject and is anonymous OR pursuant to an exemption provided by the Data Protection Acts 1988 and 20003) with the following:

- (a) Copies of pre-sanction reports are provided to the Court Service and legal practitioners representing persons before the court (including representatives of the Prosecution)
- (b) Department of Justice and Equality.
- (c) Irish Prison Service
- (d) An Garda Síochána
- (e) Health Service Executive
- (f) Tusla (Child & Family Agency)
- (g) Addiction Counsellors and medical personnel
- (h) Solas
- (i) Projects/partnerships partly or wholly funded by the Probation Service and engaged in the following - Educational, vocational & placement - counselling & offender (re-) Integration - Substance abuse, treatment and after care programme - Victim focused work with perpetrators - Accommodation - Prison vetting
- (j) Community groups & voluntary bodies that have offenders referred to them by the Probation Service to address specific issues
- (k) UK & Northern Ireland & other Probation Services (see 5.3 Transfers Abroad)
- (l) Information on offenders may also be shared with family members where appropriate.
- (m) Central Statistics office for the purpose of aligning criminal justice data

Children Act;

- (a) Children's Act advisory board
- (b) Irish Youth Justice
- (c) Minister for Children
- (d) In the case of juveniles, parents/guardians would normally be involved in the assessment of their child and as such would be both a donor and recipient of personal information relating to their child.

Homeless Offenders:

- (a) Sections of Health Service Executive (HSE) who deal with homeless people
- (b) Sections of Local Authorities who deal with homeless people
- (c) Voluntary Housing Sector who deal with homeless people
- (d) Multi-Disciplinary Committees (which would include representatives from the Gardaí, local authorities and HSE)
- (e) Department of Environment.

File storage: Off-site storage for the Probation Service (provided by third party supplier).

5.3 Transfers Abroad

In relation to the Case Tracking System (as in 4.1 above), data contained within Home Circumstance Reports & Pre-Sentence Reports may also be shared with countries participating in the EU Council Framework Decision 2008/947JHA for the purpose of managing offenders who wish to serve a court order in their home country rather than stay in the country of conviction.

Disclosures of information outside of the EU are a rare event and are dealt with on a case by case basis.

5.4 Sensitive Data Held

The following types of sensitive data may be held by the Probation Service on its Case Tracking System:

- Racial origin
- Political opinion
- Religious beliefs
- Other beliefs
- Physical or mental health
- Sexual life
- Criminal convictions

Section 6.0 - Right of Access

6.1 Accessing Personal Information

Under Section 3 and 4 of the Data Protection Act, 1988 and 2003, an individual has a right to:

- Determine whether the Probation Service holds any personal information relating to them.
- Be supplied with a copy of this data, clearly explained, of any information relating to them kept on computer or in a structured manual filing system.
- Be informed of any personal data that is being withheld and the legal exemption that applies under the Data Protection Acts for such information being withheld.
- Complain to the Data Protection Commissioner.

All applications must be in writing and include any additional details that may be necessary to enable the Probation Service to locate the data/record e.g. case number, reference number etc. All requests should be forwarded to:

Data Protection Officer
Haymarket
Smithfield
Dublin 7.

Ph: 353-1-8173600

A fee is payable but it cannot exceed €6.35. Once a request has been made and the appropriate fee paid, the information must be given within 40 days.

6.2 Exceptions to the Right of Access

Section 4 & 5 of the Data Protection Act 1988 sets out a small number of circumstances in which individual rights to access personal records can be limited.

This is necessary in order to strike a balance between the rights of the individual, on the one hand, and some important needs of civil society, on the other hand. For example, a criminal suspect does not have a right to see the information held about him by An Garda Síochána, where that would impede a criminal investigation; and a person does not have a right to see communications between a lawyer and his or her client, where that communication is subject to legal privilege in court.

6.3 What if the Probation Service refuses to respond to an access request?

If the Probation Service does not comply with an access request made, it is open to a person to make a complaint to the Data Protection Commissioner.

The Commissioner will investigate the matter to ensure that the rights of the individual are fully upheld. The Commissioner has wide powers to investigate complaints made to him/her and will take appropriate action against any persons or organizations who are not complying with the provisions of the Acts.

APPENDIX 1 - Confidentiality Agreement for Contractors

On occasions the Probation Service may need to employ third parties to provide essential goods or services. These goods and/or services are contracted under the rules governing Public Procurement through a tender process.

All successful tenderers are bound by the Data Protection Acts and as such, shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons, corporation or other legal entity, any part of the whole of the contract without the prior written approval of the Probation Service. At the time of applying for prior written approval the successful tenderer will submit a copy of the proposed contract/agreement that it intends to enter into by way of the transfer or assignment of its obligations. The proposed contract/agreement will contain a similar restriction to that outlined above so as to prevent a transfer or an assignment of the obligation so assigned to another party other than that approved by the Probation Service. Successful tenderers will be required to comply and ensure that all sub-contractors comply with the general conditions of contract and in particular the terms relating to compliance with relevant legislation in relation to the Organisation of Working Time, the Health and Safety and the Data Protection legislation.

The service provider shall comply with, and ensure that all the service provider's personnel and any sub-contractors are aware of and comply with the Data Protection Acts 1988-2003 as amended.

APPENDIX 2 - Definitions

Data means information which can be processed. It includes both automated data and manual data.

Automated data means any information on computer, or information recorded with the intention of putting it on computer.

Manual data means any information that is kept as part of a relevant filing system. Data received and not yet filed also comes under the provisions of data protection legislation.

Personal data means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller.

Processing means performing any operation or set of operations on data, including:

- obtaining, recording or keeping the data;
- collecting, organising, storing, altering or adapting the data;
- retrieving, consulting or using the data;
- disclosing the data or information by transmitting, disseminating or otherwise making it available;
- aligning, combining, blocking, erasing or destroying the data.

Data Subject is an individual who is the subject of personal data.

Data Controller is a person who, either alone or with others, controls the contents and use of personal data. For the purposes of this policy the Probation Service is the Data Controller. All employees of the Probation Service who collect and/or control the contents and use of personal data are individually responsible for compliance with the data protection legislation. The Probation Service will provide support, assistance, advice and training to all offices and staff to ensure it is in a position to comply with the legislation.

Data Compliance Officer is a person appointed by the Data Controller in the Probation Service to oversee the implementation of the data protection legislation in respect of the Service.

Data Processor is a person who processes personal information on behalf of a data controller, but does not include an employee of a data controller who processes such data in the course of his/her employment e.g. Shared Services Centre in Killarney.

Sensitive personal data relates to specific categories of data which are defined as data relating to a person's racial origin; political opinions or religious or other beliefs; physical or mental health; sexual life; criminal convictions or the alleged commission of an offence; trade union membership.

APPENDIX 3 – Legislation

- Criminal Justice (Community Service) Amendment Act, 2011
- Fines Act, 2010
- Criminal Justice Act, 2006
- Criminal Justice (Temporary Release of Prisoners) Act, 2003
- Children Act, 2001
- Sex Offenders Act, 2001
- Transfer of Persons Act, 1997
- Transfer of Persons Act, 1995
- Criminal Justice Act, 1993
- Misuse of Drugs Act, 1984
- Criminal Justice (Community Service) Act, 1983
- Misuse of Drugs Act, 1977
- Criminal Justice Act, 1960
- Criminal Justice (Administration) Act, 1914
- Probation of Offenders Act, 1907