

# 5 Probation services

The word ‘probation’ comes from the Latin word ‘*probare*’ meaning ‘to prove’. From this we may gather that the essence of probation services is to give offenders a chance to prove themselves, to demonstrate that they can conduct themselves in a law-abiding manner.

Probation work aspires to be a separate professional category. In South Africa, probation officers are social workers who carry out work in the fields of crime prevention, treatment of offenders, care and treatment of victims of crime, and with families and communities. Some probation officers perform this work on a full-time basis, while others are social workers who carry out probation services as part of a wider range of functions. The general pattern is that in urban areas there is more of a tendency to specialise and designate persons as full-time probation officers, while in rural areas social work tends to be more generic, where the number of children in conflict with the law is not always high enough to warrant full-time probation officers.

Over the past decade, the recognition of probation work in South Africa as a core component of the child justice system has developed rapidly. It is worth looking at the history of probation work, charting the recent developments and taking a look at the new responsibilities that emerge for the probation officer in terms of the Child Justice Bill.

## THE HISTORY OF PROBATION SERVICES

Probation services developed as a result of the realisation that imprisonment has negative effects for offenders, their families and the community. The approach followed in probation work is that of treatment within the community, with supervision, and under certain conditions.

The history of probation services goes back about 180 years. In the first half of the 19<sup>th</sup> century, the concept of probation services developed in both England and America as a result of concerned citizens, church groups and community organisations who were working to reform the harsh conditions in prisons. John August, a shoemaker, was appointed in 1848 as the first probation officer in the State of Boston. In America this practice led to the promulgation of the Probation Act, 1878, in the State of Massachusetts. This Act made provision for probation services and the appointment of probation officers. The Probation Act, 1878, was only applicable in the State of Massachusetts and therefore probation practice in America developed in a very fragmented way. From England, probation services spread throughout the English-speaking colonies worldwide to New Zealand, Australia and also to South Africa.

## THE DEVELOPMENT OF PROBATION SERVICES IN SOUTH AFRICA

The first Act which contributed to the development of probation services in South Africa was the First Offenders Act, 1906, of the Cape Colony. This Act did not make provision for the appointment of probation officers, but the courts were given the option of alternative sentencing in the form of offenders being placed on probation on condition of good behaviour. The regulations issued in terms of the Prisons and Reformatories Act, 1911, explicitly provided for the appointment of probation officers. These regulations, published in 1913, spelt out the duties of probation officers and the conditions of supervision for offenders. The provisions were aimed at adult offenders, but this opened the path for probation services for child offenders.

The Children's Act, 1917, made provision for the supervision of young people, as did the Criminal Procedure and Evidence Act 31 of 1917. If no probation officer was available in a particular area, a police officer or an official from the then Department of Native Affairs could be appointed to render the

service. In the beginning it was mostly private organisations that ran probation services, notably the Prisons Aid Association that was established in 1910 and the Probation League of South Africa, established in 1933. These two organisations merged in 1935 to form the Social Services Association, which became known as NICRO in 1970.

Chisholm (1989) records that the first black probation officer, Charlotte Maxexe, who was a leading figure in the Bantu Women's League, was appointed in 1923. However, she was discharged in 1939, 'the relinquishing of her services a sign of both cost-cutting exercises in the context of the great depression, as well as the steadily hardening segregationist programme of non-recognition of the right of Africans to be in urban area'.<sup>15</sup>

## **POLICY AND LAW REFORM REGARDING PROBATION SERVICES**

Policy and law reform has contributed to the development of probation practice in South Africa. The Lansdowne Commission into prison and penal reform was appointed in 1945 and submitted a report to Parliament in 1947. Following the Lansdowne Commission's report, the Criminal Procedure Act 56 of 1955 included provision for supervision, thus allowing for greater scope in alternative sentencing. The Criminal Procedure Act 51 of 1977 gave further statutory recognition to probation services.

The Children's Act 33 of 1960 included provisions regarding probation services, and probation officers were appointed in terms of Section 58 of that Act. Unfortunately this legislation was applied on a racially segregated basis until the late 1980s. The first Act which specifically addressed probation services was the Probation Services Act 98 of 1986, but due to Apartheid it was 'own affairs' legislation that applied to whites only. Ultimately, the Probation Services Act 116 of 1991 was passed which applied to all people in South Africa.

In 1995 the Inter-Ministerial Committee on Young People at Risk (IMC) was established to lead the transformation of the Child and Youth Care System. A pivotal factor in this development was the identification of probation officers as key role-players in the criminal justice system in relation to child offenders. This led to the setting up of a probation advocacy group which met to discuss matters relating to personnel administration standards for probation services and issues relating to training. The body did not enjoy any official status, but

did guide matters such as training of probation officers and the development of a personnel administration standard for probation officers.

In terms of the current law, only social workers may qualify to be appointed as probation officers. The last few years have seen the development of a number of training options. Training programmes have been developed for a *B. Tech* qualification and the University of Cape Town, the University of Johannesburg and the University of Port Elizabeth are now all offering post-graduate degrees in probation practice. The graduates are drawn from a number of disciplines including social work, criminology, penology, criminal law, psychology and sociology. The required educational standard for probation officers is set out in the personnel administration standard.

## THE ROLE OF THE PROBATION OFFICER

In terms of the Probation Services Act 116 of 1991 the probation officer has a number of duties towards offenders and their families and communities, as well as towards victims of crime. Offenders of any age may be eligible for probation services, but in practice probation officers have been actively prioritising child offenders during the past decade, which is in line with policy and legislative developments.

According to the Probation Services Act the probation officer has a duty, among others, to –

- Investigate the circumstances of an accused person for the purpose of reporting to the court on his or her treatment and committal to an institution as well as to render assistance to the family
- Assist the probationer in complying with his or her probation conditions in order to improve his or her social functioning, which includes supervision, pre-trial programmes for children, as well as community-based sentencing options
- Report to the court on progress and supervision of a probationer

The Criminal Procedure Act also prescribes certain roles and tasks for the probation officer. When a child is arrested, the police are required to inform a probation officer about the arrest. A child may be placed under the supervision of a probation officer, both as a pre-trial measure or as a sentence.

## NEW ACTIVITIES FOR PROBATION OFFICERS

The Probation Services Amendment Act 35 of 2002 was signed into law by the President in 2002. This Act provides a legislative framework for a number of activities already being provided by probation services on the basis of pilot projects and innovations in service delivery. The Act amends the Probation Services Act in several ways, for example by –

- Introducing assessment, support, referral and mediation services in respect of victims of crime
- Providing for the establishment of restorative justice programmes and services as part of appropriate sentencing and diversion options
- Providing for the reception, assessment and referral of an accused person and the rendering of early intervention services and programmes, the investigation of the circumstances of an accused person and the provision of a pre-trial report on the desirability or otherwise of prosecution and the investigation of the circumstances of convicted persons
- Providing for the mandatory assessment of every arrested child who remains in custody before his or her first appearance in court
- Providing for the competency of a probation officer to recommend an appropriate sentence or other options to the court (a function already recognised by the courts in practice)
- Providing for the establishment of a probation advisory committee to advise the Minister on matters relating to probation services