

## **On probation**

### *Unofficial translation*

The Law of the Republic of Kazakhstan dated 30 December 2016 № 38-IV LRK.

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This Law regulates social relations in organization and functioning of probation and establishes the concept, objectives, tasks, principles, types and forms of probation, as well as the legal status of persons subject to probation and the subjects that carry it out.

## **Chapter 1. GENERAL PROVISIONS**

### **Article 1. Concept, objective and tasks of probation**

1. Probation is a system of types of activities and individually defined control and social and legal measures aimed at correcting the behavior of persons whose categories are defined by law to prevent commission of criminal offenses.

2. Objective of probation is to assist in ensuring safety of society by:

- 1) correction of the behavior of the suspect, the accused;
- 2) resocialization of the convict;
- 3) social adaptation and rehabilitation of a person released from the institution of penal (penitentiary) system.

3. In accordance with this objective, the probation tasks are:

- 1) provision of social and legal assistance to persons subject to probation;
- 2) execution of certain types of punishments, defined by law, that are not related to deprivation of liberty;
- 3) exercising probationary control over convicts in respect of whom it has been established by the court;
- 4) preparation for the release of a convict serving a sentence in the penitentiary (penal) system institution.

**Footnote. Article 1 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

### **Article 2. Legislation of the Republic of Kazakhstan on probation**

1. Legislation of the Republic of Kazakhstan on probation is based on the Constitution of the Republic of Kazakhstan, consists of the Criminal Code, the Criminal Procedure Code and the Criminal Executive Code of the Republic of Kazakhstan, this Law and other normative legal acts of the Republic of Kazakhstan.

2. International treaties ratified by the Republic of Kazakhstan shall have priority over this Law and shall be applied directly, except when an international treaty implies that a law is required for its application.

### **Article 3. Basic principles of probation**

Probation is based on the following principles:

- 1) observance of the rights, freedoms and lawful interests of a man and a citizen;
- 2) legality;
- 3) humanism;
- 4) publicity, except for information constituting state secrets and other secret protected by law;
- 5) a differentiated and individual approach in determining the scope of social and legal assistance and exercising probationary control in respect of persons subject to probation;
- 6) stimulation of law-abiding and active socially useful behavior of persons subject to probation;
- 7) interaction of subjects performing probation.

**Footnote. Article 3 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

### **Article 4. Persons subject to probation, their rights and obligations**

**Footnote. The heading - as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

1. Categories of persons for whom probation is applied are determined by the Criminal Code and the Criminal Executive Code of the Republic of Kazakhstan, as well as this Law.

2. Persons subject to probation shall have the right to:

- 1) treatment, receipt of information in the native or other language they speak, about their rights and obligations, the punishment applied by the court, the procedure and conditions for execution of other measures of criminal and legal influence, their changes, as well as the procedure for submitting proposals, applications and complaints;
- 2) appealing against actions or inaction of subjects conducting probation in accordance with the procedure established by the legislation of the Republic of Kazakhstan;
- 3) participation in activities for resocialization, social adaptation and rehabilitation in accordance with the procedure established by the legislation of the Republic of Kazakhstan.

The persons specified in paragraph 1 of this article also have other rights stipulated by the legislation of the Republic of Kazakhstan.

3. Persons subject to probation shall be obligated to:

- 1) observe and comply with the procedure and conditions of probation control;
- 2) **Excluded by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

- 3) fulfill the legal requirements of the subjects that are carrying out probation;
- 4) provide reliable information to the subjects who are carrying out probation.

The persons specified in paragraph 1 of this article also bear other duties provided for by law.

**Footnote. Article 4 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 5. Forms of probation**

1. Probation is carried out in the forms of probation control and provision of social and legal assistance to persons who are registered in the probation service.

2. Probation control is the activity of the probation service and the police in exercising control over performance, by persons, who are registered in their service, of duties assigned to them by law and by the court.

3. Socio-legal assistance - a set of measures implemented by the entities conducting probation, aimed at re-socialization, social adaptation and rehabilitation of persons subject to probation.

**Footnote. Article 5 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 6. Measures of resocialization, social adaptation and rehabilitation of persons subject to probation**

1. Resocialization, social adaptation and rehabilitation of persons subject to probation are ensured through:

1) provision of social and legal assistance on:

receiving medical services;

receiving secondary education;

mastering the profession (vocational training, retraining and advanced training);

assistance in employment;

provision of psychological support;

receiving benefits and social allowances, established by the legislation of the Republic of Kazakhstan;

2) assistance in restoration and formation of a supportive system of social relations, including:

social and psychological and psychological counseling;

social patronage;

assistance in restoration of family and other socially positive ties, subject to mutual consent of the parties;

3) social and domestic adaptation, which includes:

provision of a place of stay;

- organization of rehabilitation activities;
- involvement in cultural events;
- 4) consultations on social and legal issues.

2. The measures provided for in paragraph 1 of this article shall be implemented by the entities conducting probation.

**Footnote. Article 6 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

## **Chapter 2. SUBJECTS THAT CARRY OUT PROBATION AND THEIR COMPETENCE**

### **Article 7. Subjects that carry out probation**

The subjects that carry out probation are the state bodies that operate within their competence in the manner established by the legislation of the Republic of Kazakhstan on probation, as well as citizens, public associations and other legal entities - in accordance with Article 11 of this Law.

### **Article 8. Competence of law enforcement bodies**

1. Competence of the Ministry of Internal Affairs of the Republic of Kazakhstan includes:

- 1) implementation of the state policy in the field of probation;
- 2) implementation of the state control in the field of probation;
- 3) approval of:

the method of conducting psychosocial testing of the identity of the suspect, the accused at the stage of pre-trial probation;

the method of preparing a pre-trial report;

4) performance of other functions entrusted to it by this Law, other laws of the Republic of Kazakhstan, acts of the President and the Government of the Republic of Kazakhstan.

2. Competence of the authorized body of the penal (penitentiary) system includes:

- 1) ensuring the interaction of subjects carrying out probation;
- 2) coordination of activities of the institutions of the penal (penitentiary) system and probation services;

3) development of:

the methods of conduct of psychosocial testing of the identity of the suspect, the accused at the stage of pre-trial probation;

the methods of preparing a pre-trial report;

4) performance of other powers provided for by the legislation of the Republic of Kazakhstan.

3. Within the limits of their competence established by the legislation of the Republic of Kazakhstan, the police shall:

1) take a set of measures to prevent, identify, study, eliminate the causes and conditions that contribute to the commission of offenses by persons under probation control;

2) carry out probation control of minors;

3) exercise other powers provided for by the legislation of the Republic of Kazakhstan.

### **Article 9. Powers of probation service**

1. Probation service - is the body of the penal (penitentiary) system, which exercises executive and administrative functions to ensure execution of criminal penalties without isolation from society, as well as the organization and functioning of probation.

2. Probation service:

1) keeps records of persons subject to probation;

2) establishes the place of residence of the person subject to probation, his health condition, education level and employment;

3) Excluded by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).

4) explains the procedure for granting and refusing to receive social-legal assistance, assists in obtaining it;

5) prepares a pre-trial report regarding the suspect, the accused;

6) explains to the persons to whom the punishments are applied, not related to the deprivation of liberty, the procedure for performance of the duties assigned to them by the court and the consequences of their non-performance;

7) explains to the persons, with respect to whom the probation control is established, the procedure and conditions for its implementation and termination, as well as the consequences of non-compliance with probation control conditions;

8) carries out probation control;

9) requests information, references, characteristics, other information from legal entities necessary to exercise their powers, in compliance with the requirements of the legislation of the Republic of Kazakhstan on state secrets and other secrets protected by law;

10) participates in development and implementation of:

programs in the field of protection of the rights of minors and the family;

mechanisms for involving the subjects, carrying out probation in protection of the rights of minors and the family;

11) participates in monitoring of the quality of services for protection of the rights of minors and the family;

12) exercises other powers provided for by the legislation of the Republic of Kazakhstan.

3. The probation service shall interact with state bodies, citizens, public associations and other legal entities in accordance with the legislation of the Republic of Kazakhstan.

Footnote. Article 9 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).

### **Article 10. Competence of local executive bodies**

The local executive bodies of the region, the city of republican significance, the capital, the district, the city of regional significance shall exercise powers in the provision of social, legal and other assistance to persons registered with the probation service by their social adaptation and rehabilitation in accordance with the legislation of the Republic of Kazakhstan

**Footnote. Article 10 in the wording of the Law of the RK dated 27.12.2019 № 292-VI (the procedure of entry into force see Article.2).**

### **Article 11. Participation of citizens, public associations and other legal entities in probation**

1. Participation of citizens, public associations and other legal entities in probation is implemented through voluntary assistance in providing social and legal assistance to persons for whom probation is applied in the following forms:

1) development and implementation of programs and projects aimed at improving the work of probation service and social and legal assistance to persons registered in the probation service;

2) the conduct of sociological and other monitoring;

3) participation in development and public discussion of drafts of normative legal acts governing probation;

4) participation in the work of advisory and consulting and expert bodies on probation

5) rendering other assistance in forms that do not contradict the legislation of the Republic of Kazakhstan.

2. Persons participating in implementation of probation are not entitled to disclose personal data, as well as information about the private lives of persons subject to probation, without their written consent.

3. International non-governmental organizations can assist the probation service in accordance with the legislation of the Republic of Kazakhstan, international treaties and other obligations of the Republic of Kazakhstan.

## **Chapter 3. TYPES OF PROBATION AND PECULIARITIES OF ITS IMPLEMENTATION**

### **Article 12. Types of probation**

Types of probation are:

1) pre-trial probation - activities and a set of measures for the pre-trial report preparation;

2) sentencing probation - the activity and a set of measures to establish and implement probation control in respect of persons sentenced to restriction of liberty, as well as probationers, and providing them with social and legal assistance;

3) penitentiary probation - activities and a set of measures for re-socialization of persons serving a sentence in the form of imprisonment in the institutions of penal (penitentiary) system;

4) post-penitentiary probation - activities and a set of measures to establish and implement probation control in relation to persons released from the institutions of the penal (penitentiary) system and provide them with social and legal assistance.

**Footnote. Article 12 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

### **Article 13. Pre-trial probation**

1. Pre-trial probation is applied on a voluntary basis with respect to the suspect, the accused:

- 1) minors;
- 2) persons with disabilities;
- 3) women:  
at the age of fifty-eight and above;  
pregnant women;  
having children under the age of three;
- 4) men:  
at the age of sixty-three and above;  
bringing up children alone under the age of three.

Pre-trial probation does not apply to persons to whom a measure of restriction in the form of house arrest or detention is applied.

2. Pre-trial probation shall be carried out upon the written application of the person specified in paragraph 1 of this article from the moment of his appeal.

3. Social and legal assistance in pre-trial probation consists of the measures listed in Article 6 of this Law.

4. The probation service, basing on the information received in the manner prescribed by subparagraph 9) of paragraph 2 of Article 9 of this Law, shall draw up a pre-trial report submitted to the person subject to pre-trial probation before the start of the trial.

Based on the results of implementation of this program, as well as on the basis of information received in accordance with the procedure provided for by subparagraph 9) of paragraph 2 of Article 9 of this Law, the probation service prepares a pre-trial report submitted to the person to whom pre-trial probation is applied before the trial begins.

The specified person can participate in preparation of pre-trial report and express an opinion on its content, which should be reflected in the pre-trial report.

5. If the criminal case is terminated at the pre-trial investigation stage, the probation service shall terminate the pre-trial probation.

**Footnote. Article 13 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).**

## **Article 14. Pre-trial report**

1. Pre-trial report - information on personal characteristics of the suspect, the defendant.
2. Content of the pre-trial report includes the introductory, descriptive and recommendatory parts.

The introductory part specifies:

- 1) the time, date and place of drawing up of the pre-trial report;
- 2) position, surname and initials of the person who prepared the pre-trial report;
- 3) surname, name and patronymic (if any), date, month, year and place of birth of the suspect or the accused.

The descriptive part gives the following information about the suspect, the accused:

- 1) citizenship, marital status, occupation, education, residence, criminal record, other data characterizing them;

2) Excluded by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).

- 3) social characteristics;
- 4) the results of psychosocial personality testing;
- 5) assessment of the risks of committing criminal offenses;
- 6) following the recommendations of the probation service.

In the recommendatory part, an indicative list of duties and restrictions is given, which are recommended to be used when appointing punishment to the person and its execution.

The information stated in the pre-trial report is used for all types of probation, taking into account its update.

Footnote. Article 14 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).

## **Article 15. Sentencing probation**

1. A sentencing probation applies in respect of a person:
  - 1) sentenced to restriction of freedom;
  - 2) sentenced to probation.
2. Sentencing probation in respect of persons specified in paragraph 1 of this article shall be carried out in the form of probation control according to the rules of article 44 of the Criminal Code of the Republic of Kazakhstan, the duration of which is determined by the sentence or the court order.
3. A person in respect of whom the probation control is established shall be obliged:
  - 1) within ten days from the date of entry of the judgment or court order into legal force, to come to the probation service for registration;
  - 2) to comply with the conditions and procedure for serving a sentence and other measures of criminal and legal influence;



3) to come to the probation service on the specified dates for registration and a preventive conversation with him;

4) to inform the probation service in writing about changing the place of residence, work or study;

5) to perform other duties assigned to him by law and the court.

4. In case of non-observance by the person of the probation control conditions, the probation service:

1) with respect to the person convicted to restriction of his liberty, applies the penalty in the form of a written warning, and in case of malicious evasion from serving the sentence, submits materials to the court for resolving the issue of replacing the unserved part of restriction of freedom by the punishment in the form of deprivation of liberty;

2) with respect to the person sentenced to probation, makes a recommendation on extension of the probation control period or cancellation of the probation and execution of the punishment appointed by the court verdict.

5. If, after at least half of the probation control period, the convict has conditionally proved his correction, the probation service submits to the court a recommendation on cancellation of the probation and clearing of a criminal record of the convict.

**6. Excluded by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII ( shall be enforced sixty calendar days after the date of its first official publication).**

**Footnote. Article 15 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

### **Article 16. Penitentiary probation**

1. Penitentiary probation is applied to a convict who is serving a sentence in the form of imprisonment in the institutions of the penal (penitentiary) system.

2. Resocialization of the convict shall be carried out from the moment of his arrival at the institution of the penal (penitentiary) system in accordance with the requirements of the criminal executive legislation of the Republic of Kazakhstan.

3. With regard to a convict serving a prison sentence, who has one year left before serving out his sentence, re-socialization shall be provided by the administration of the penitentiary (penal) system institution in the form of social and legal assistance.

4. An individual social and legal assistance program shall be drawn up and implemented by the administration of the penitentiary (penal) system institution.

5. An individual program of social and legal assistance includes:

1) the data of the pre-trial report (if any) developed by the probation service at the pre-trial probation stage;

2) materials characterizing the behavior of the convicted person during the period of stay in the institution of the penal (penitentiary) system;

3) information on compensation and (or) non-reimbursement of claims by a person prepared for release;

4) information on social relations of the convict, prepared for release, his state of health, the level of education, work skills, awareness of the legal mechanisms for exercising the rights and freedoms, as well as other necessary information for correcting social behavior and successful social adaptation of the convict;

5) specific measures aimed at providing social and legal assistance to a convicted person who is preparing for release;

6) the planned measures to provide social and legal assistance, labor and domestic arrangements for the convict after his release.

6. At the request of convicts subject to penitentiary probation, the administration of the penitentiary (penal) system institution, together with local executive bodies at their chosen place of residence after release, shall establish their interaction:

1) with employment centers for registering a convicted person and providing him with information on vacancies;

2) with specialized organizations (agencies) to rent housing;

3) with social services to assist the elderly, persons with disabilities and persons without a fixed place of residence in obtaining social services.

7. When implementing an individual social and legal assistance program, the administration of the penitentiary (penal) system institution shall:

1) interacts with other subjects that carry out probation on the issues of labor and household arrangements for persons preparing for release;

2) conducts work on explanation of the legislation of the Republic of Kazakhstan regulating the order of the labor and household arrangements for persons who are subject to probation, informs about the existing legal mechanisms for exercising and protection of rights and freedoms;

3) clarify the scope and procedure for obtaining social and legal assistance when releasing from places of deprivation of liberty;

4) informs in advance about the procedure for exercising administrative supervision and probation control, as well as the consequences of its violation.

**Footnote. Article 16 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).**

### **Article 17. Post-penitentiary probation**

1. Post-penitentiary probation applies to a person:

1) released on parole from serving a sentence in the form of deprivation of liberty;

2) released from the places of deprivation of liberty, against whom the court has established the administrative supervision;

3) to whom the deprivation of liberty was replaced by restriction of freedom in accordance with Article 73 of the Criminal Code of the Republic of Kazakhstan;

4) to whom the deprivation of liberty was replaced by a fine in accordance with Article 73 of the Criminal Code of the Republic of Kazakhstan;

5) who served the sentence, appointed by the court, in the form of deprivation of liberty.

2. Post-penitentiary probation shall be applied to person released on parole from serving the imprisonment sentence, in the form of probationary control performed by the police at his residence place, as well as provision of social and legal assistance by local executive bodies, public associations and other organizations in accordance with the legislation of the Republic of Kazakhstan.

3. Post-penitentiary probation in respect of a person to whom the court appointed an administrative supervision is exercised in the form of providing social and legal assistance.

4. Post-penitentiary probation in respect of a person to whom deprivation of liberty was replaced by a restriction of liberty is carried out according to the rules provided for in article 15 of this Law.

5. Post-penitentiary probation in respect of the persons referred to in subparagraphs 4) and 5) of paragraph 1 of this article shall be carried out in the form of providing them with social and legal assistance in accordance with the legislation of the Republic of Kazakhstan on their initiative by applying to local executive bodies.

6. Excluded by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII ( shall be enforced sixty calendar days after the date of its first official publication).

Footnote. Article 17 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).

#### **Article 18. Peculiarities of probation in relation to a minor**

Probation in relation to the minor is carried out:

1) taking into account his individual and age features;

2) with the involvement of the family;

3) when interacting with the bodies exercising the functions of guardianship or custody, and organizations performing functions to protect the rights of the child;

4) when interacting with citizens, public associations and other legal entities.

Footnote. Article 18 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).

#### **Article 19. Implementation of probation control in respect of a minor**

1. Probation service shall implement the probation control in respect of a minor:

1) sentenced to punishment in the form of restriction of liberty;

2) sentenced to probation.

2. The police carry out probation control in relation to the minor:

1) released on parole from serving a sentence in the form of deprivation of liberty;  
2) in respect of whom the court has appointed a compulsory measure of educational influence, established by paragraph 4) of part one of Article 84 of the Criminal Code of the Republic of Kazakhstan.

3. The probation service, when registering a minor in respect of whom probation control is established, shall implement a set of measures in accordance with Articles 69, 169 and 174 of the Penal Code of the Republic of Kazakhstan, taking into account the provisions of Article 18 of this Law.

If necessary, an individual program of providing social and legal assistance to a minor provides for involvement of a teacher and a psychologist.

4. In relation to a minor, along with the measures specified in paragraph 3 of this article, the probation service together with the representatives of the guardianship and custody body conducts a quarterly survey of the living conditions of the minor and draw up an act.

**Footnote. Article 19 as amended by the Law of the Republic of Kazakhstan dated 30.12.2021 No. 95-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Chapter 4. FINAL PROVISIONS**

#### **Article 20. Liability for violation of the legislation of the Republic of Kazakhstan on probation**

Violation of the legislation of the Republic of Kazakhstan on probation entails responsibility in accordance with the laws of the Republic of Kazakhstan.

#### **Article 21. Order of enactment of this Law**

This Law shall enter into force upon expiry of ten calendar days after the date of its first official publication.

*The President  
of the Republic of Kazakhstan*

*N. NAZARBAYEV*