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## GENERAL NOTICE

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### NOTICE 620 OF 2007

#### MINISTRY FOR CORRECTIONAL SERVICES

#### CORRECTIONAL SERVICES AMENDMENT BILL, 2007

I, Bryce Mathemba Ngconde Balfour, Minister of Correctional Services, hereby publish the Correctional Services Amendment Bill, 2007, for general information.

**MINISTER OF CORRECTIONAL SERVICES**

**B.M.N. BALFOUR**

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75-Bill; explanatory summary  
of Bill published in Government Gazette No.     of     ) (The English text is the  
official text of the Bill)*  
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(MINISTER OF CORRECTIONAL SERVICES)

[B - 2007]

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GENERAL EXPLANATORY NOTE:

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.  
 \_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

B I L L

To amend the Correctional Services Act, 1998, so as to insert, substitute amend or delete certain definitions; to make further provision for the manner in which prisoners are detained; and for the manner in which correctional centres are to be managed; to authorise the Minister of Correctional Services to determine, under certain conditions, the period before a prisoner may be placed on parole; to make further provision for matters relating to Correctional Supervision and Parole Boards and the Judicial Inspectorate; to provide for compliance management and monitoring of relevant prescriptions; a Departmental Investigation Unit and a unit dealing with the institution of disciplinary procedures; to further regulate matters relating to officials of the Department of Correctional Services; and the powers of the Minister to make regulations; and to provide for matters connected therewith.

**BE IT ENACTED** by the Parliament of the Republic of South Africa as follows:—

**Amendment of section 1 of Act 111 of 1998, as amended by section 1 of Act 32 of 2001**

1. Section 1 of the Correctional Services Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of **"amenities"** of the following definition:

" 'Area Commissioner' means a correctional official, appointed by the National Commissioner, in charge of all correctional officials who are on the establishment of a management area or office or who have been attached thereto for duty;"

(b) by the deletion of the definition of **"Area Manager"**;

(c) by the insertion after the definition of "authorised official" of the following definition:

" 'care' refers to the provision of services aimed at fulfilling the basic needs of offenders in order to develop, maintain and enhance the well-being of persons under the authority of the Department;"

(d) by the deletion of the definition of **"Commissioner"**;

(e) by the insertion after the definition of **"Controller"** of the following definitions:

" 'correctional centre' means any place established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to placement under protective custody, and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches,

outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of incarceration, detention, protection, labour, treatment or otherwise, and all quarters of correctional officials used in connection with any such correctional centre, and for the purpose of sections 115 and 117 of this Act includes every place used as a police cell or lock-up;

'Correctional medical officer' means a medical practitioner registered in terms of Health Professions Act, 1974 (Act No. 56 of 1974) and appointed in terms of section 3 (4);

'Correctional sentence plan' means a plan for each offender guiding interventions aimed at addressing the risks and needs of the offender as identified during the in-depth risk assessment to correct the offending behaviour. It spells out what services and programmes are required to target offending behaviour and to help the offender develop skills to handle socio-economic conditions that led to criminality. It also spells out services and programmes needed to enhance the offender's social functioning. This plan sets timeframes and specifies responsibilities to ensure that the intended services and programmes are offered to the offender;"

- (f) by the substitution for the definition of "Head of Prison" of the following definition:

" 'Head of [Prison] **Correctional Centre**' means a correctional official designated by the National Commissioner to manage and control a particular [prison] correctional centre;"

- (g) by the substitution for the definition of **"Independent Prison Visitor"** of the following definition:

" **'Independent [Prison] Correctional Centre Visitor'** means a person appointed under section 92;"

- (h) by the insertion after the definition of **"Independent Correctional Centre Visitor"** of the following definition:

" **'inmate'** means any person, whether convicted or not, who is detained in custody in any correctional centre or who is being transferred in custody or is en route from one correctional centre to another correctional centre;"

- (i) by the substitution for the definition of **"Inspecting Judge"** of the following definition:

" **'[Inspecting Judge] Inspector General for Correctional Services'** means a person appointed under section 86;"

- (j) by the deletion of the definition of **"joint venture prison"**;

- (k) by the deletion of the definition of **"medical officer"** ;

- (l) by the insertion after the definition of **"mother and child unit"** of the following definition:

" **'National Commissioner'** means the National Commissioner of Correctional Services contemplated in section 3(3);"

- (m) by the insertion after the definition of **"National Council"** of the following definition:

" **'needs-based programmes'** refers to programmes that are developed or rendered according to the identified specific needs of offenders;"

- (n) by the insertion after the definition of **"non-parole period"** of the following

definition:

" 'offender' means a convicted person sentenced to incarceration or correctional supervision;"

- (o) by the insertion after the definition of **"parole"** of the following definition:

" 'parolee' means an offender released from a correctional centre before the expiry of his or her sentence, to serve the remainder of the sentence in the community under the supervision and control of the Department;"

- (p) by the deletion of the definition of **"prison"**;

- (q) by the deletion of the definition of **"prisoner"**;

- (r) by the deletion of the definition of **"Provincial Commissioner"**;

- (s) by the insertion after the definition of **"publication"** of the following definition:

" 'public-private partnership correctional centre' means a correctional centre or part of a correctional centre referred to in section 103;"

- (t) by the insertion after the definition of **"Public Service Act"** of the following definition:

" 'Regional Commissioner' means a correctional official designated by the National Commissioner to manage and control the activities of the Department in a region as determined by the National Commissioner;"

- (u) by the insertion after the definition of **"register"** of the following definition:

" 'remand supervision' means a person awaiting trial or sentencing within the community and subject to supervision in the community corrections system;"

- (v) by the substitution for the definition of **"sentenced prisoner"** of the following definition:



" 'sentenced [prisoner] inmate' means any person who has been sentenced to [imprisonment] incarceration and a person who has been arrested in terms of section 70(1)(a)(iii) of the Act"; and

- (w) by the substitution for the definition of **"unsentenced prisoner"** of the following definition:

" 'unsentenced [prisoner] inmate' means any person who is lawfully detained in [prison] a correctional centre, but who has not been sentenced to [imprisonment] incarceration";.

#### **Amendment of section 13 of Act 111 of 1998**

2. Section 13 of the principal Act is hereby amended by the addition of the following subsection:

"(7) The Commissioner may allow community organisations, non-governmental organisations and religious denominations or organisations to interact with inmates in order to facilitate the rehabilitation and integration of the inmates in the community.".

#### **Amendment of section 16 of Act 111 of 1998, as amended by Act 32 of 2001**

3. Section 16 of the principal Act is hereby amended—  
(a) by the substitution for the heading to that section of the following heading:

**"[Development and support] Correction, development and care programmes and services";** and



(b) by the substitution for subsection (1) of the following subsection:

"(1) The Department may provide correction, development and [support] care programmes and services even when not required to do so by this Act."

**Amendment of section 20 of Act 111 of 1998, as amended by section 10 of Act 32 of 2001**

4. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A female [prisoner] inmate may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is [five] two years of age."

**Amendment of section 24 of Act 111 of 1998**

5. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) A hearing before a Head of [Prison] a Correctional Centre or the authorised official must be conducted informally and without representation depending on the nature and seriousness of the infringement.";

(b) by the deletion in subsection (3) of paragraph (b);

(c) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

"(d) [in the case of serious or repeated infringements, solitary confinement] detention in a single cell for a period not exceeding 30 days.";

(d) by the substitution for subsection (7) of the following subsection:

"(7) (a) At the request of the [offender] inmate proceedings resulting in any penalty other than [solitary confinement] detention in a single cell must be referred for review to the National Commissioner.

(b) The National Commissioner may confirm or set aside the decision or penalty and substitute an appropriate order for it.";

(e) by the addition of the following subsection:

"(8) In the case of serious or repeated infringements the disciplinary official may direct the inmate to be segregated in order to undergo programmes aimed at correcting his or her behaviour."

#### **Substitution of section 25 of Act 111 of 1998**

6. The following section is hereby substituted for section 25 of the principal Act:

**"[Solitary confinement] Detention in a single cell**

25. (1) **[A penalty of solitary confinement]** Before an inmate is

detained in a single cell the matter must be referred to the **[Inspecting Judge]** Inspector General for Correctional Services for review. The **[Inspecting Judge]** Inspector General for Correctional Services must within three days, after considering the record of the proceedings and a report from a registered nurse, psychologist or the Correctional medical officer on the health status of the **[prisoner]** concerned, confirm or set aside the decision **[or penalty]** and substitute an appropriate order for it.

(2) **[The penalty of solitary confinement]** A decision to detain an inmate in a single cell may only be implemented when the **[Inspecting Judge]** Inspector General for Correctional Services has confirmed such **[penalty]** decision.

(3) **[A prisoner in solitary confinement]** An inmate detained in a single cell must be visited at least once every four hours by a correctional official, once a day by the **[Head of Prison]** Head of Correctional Centre, and his or her health assessed once a day by a registered nurse or psychologist or a Correctional medical officer.

(4) **[Solitary confinement]** Detention in a single cell must be discontinued if in the view of the registered nurse, psychologist or Correctional medical officer it poses a threat to the physical or mental health of the **[prisoner]** inmate."

**Amendment of section 27 of Act 111 of 1998, as amended by section 14 of Act 32 of 2001**

7. Section 27 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (d) of the following paragraph:

"(d) searches contemplated in subsections (1) and (2) must be authorised by the Head of **[Prison]** the Correctional Centre but searches in terms of subsection (2)(b), (c), (d) and (e) must be executed or supervised by a registered nurse, Correctional medical officer or a medical practitioner other than a correctional official, depending on the procedure necessary to effect the search."

**Amendment of section 30 of Act 111 of 1998, as amended by section 16 of Act 32 of 2001**

8. Section 30 of the principal Act is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph (e), the addition of the word "and" to paragraph (f) and the addition to that subsection of the following paragraph:

"(g) to affect programmes as contemplated in section 24(8)."

**Amendment of section 31 of Act 111 of 1998, as amended by section 17 of Act 32 of 2001**

9. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) **[A prisoner]** An inmate may not be brought before court whilst in mechanical restraints **[except handcuffs or leg-irons]**, unless authorised by the court.";

(b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

"(a) When **[a prisoner is in solitary confinement or in segregation]** an inmate is detained in a single cell and mechanical restraints are to be used, such use of mechanical restraints must be authorised by the Head of **[Prison]** the Correctional Centre and the period may not, subject to the provisions of paragraphs (b) and (c), exceed seven days.";

(c) by the addition to subsection (3) of the following paragraph:

"(d) All cases of the use of mechanical restraints must be reported immediately by the Head of the Correctional Centre to the National Commissioner and to the Inspector General for Correctional Services."; and

(d) by the deletion of subsection (4).

## **Amendment of section 37 of Act 111 of 1998**

10. Section 37 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- "(1A) In order to furnish sentenced inmates the opportunity to comply with the obligations contemplated in subsection (1), the Department must, as far as it is possible, apply a management regime which consists of—
- (a) good communication between correctional officials and inmates, which is understood by everyone;
  - (b) team work;
  - (c) direct, interactive supervision of inmates;
  - (d) assessment of inmates;
  - (e) needs-driven programmes in a structured day and correctional plan;
  - (f) the provision of multi-skilled staff in an enabling and resourced environment;
  - (g) a restorative, developmental and human rights approach to inmates;
  - and
  - (h) delegated authority with clear lines of accountability."

## **Amendment of section 38 of Act 111 of 1998**

11. Section 38 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

- "(1A) (a) As soon as possible after the assessment

contemplated in subsection (1) the Case Management Committee must compile a Correctional sentence plan in relation to the inmate's future in the correctional centre.

(b) The Correctional sentence plan must address each of the matters and needs referred to in subsection (1).";  
and

(b) by the substitution for subsection (2) of the following subsection:

"(2) In the case of a sentence of **[imprisonment of 12 months or more]** incarceration exceeding 24 months, the manner in which the sentence should be served must be planned in the light of **[this]** the assessment and plan referred to in subsections (1) and (1A) and any comments by the sentencing court."

**Amendment of section 40 of Act 111 of 1998, as amended by section 21 of Act 32 of 2001**

12. Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) Sufficient work must as far as is practicable be provided to keep **[prisoners]** inmates active for a normal working day and **[a prisoner]** an inmate may be compelled to do such work.

(b) Such work must as far as is practicable be aimed at providing the inmate with market related skills in order to be gainfully employed in society on release."



## Amendment of section 41 of Act 111 of 1998

13. Section 41 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) (a) Sentenced **[prisoners]** inmates who are illiterate or children **[may be compelled to]** must take part in the educational programmes offered in terms of subsection (1).

(b) Such programmes may be prescribed by regulation.".

(b) by the substitution for subsection (4) of the following subsection:

"(4) The Department must provide as far as practicable other correction, development and **[support]** care programmes which meet specific needs of sentenced **[prisoners]** offenders, and which must include programmes aimed at addressing reconciliation of the inmates with the community and healing relationships with victims.";

(c) by the substitution for subsection (6) of the following subsection:

"(6) Sentenced **[prisoners]** offenders may be compelled to participate in programmes and to use services offered in terms of subsections (1), (3) and (4) where **[in the opinion of the Commissioner]** the assessment procedure in terms of section 38 shows a need that their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community and to other offenders.".

**Amendment of section 42 of Act 111 of 1998, as amended by section 22 of Act 32 of 2001**

**14.** Section 42 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) ensure that each sentenced **[prisoner]** inmate has been assessed, and that for **[prisoners]** an inmate serving more than **[twelve]** 24 months there is a plan **[specified]** as to how the inmate should serve his or her sentence as contemplated in section 38(2);";

(b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:

"(e) **[at the request of the Area Manager]**, submit a report as contemplated in paragraph (d) to [him or her] the National Commissioner in respect of any **[prisoner]** inmate sentenced to **[12 months' imprisonment]** 24 months incarceration or less."; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) **[A prisoner]** An offender must be informed of the contents of the report submitted by the Case Management Committee to the Correctional Supervision and Parole Board or the **[Area Manager]** National Commissioner and be afforded the opportunity to

submit written representations to the Correctional Supervision and Parole Board or **[Area Manager] National Commissioner**, as the case may be."

#### Amendment of section 50 of Act 111 of 1998

15. Section 50 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) (a) The objectives of community corrections are—

- (i) to afford inmates an opportunity to serve their sentences in a non-custodial manner;
- (ii) to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future;
- (iii) to enable persons subject to community corrections to be rehabilitated in a manner that best keep them as an integral part of society; and
- (iv) to enable persons subject to community corrections to be fully integrated into society when they have completed their sentences or when they no longer pose a threat to society or the law.

(b) These objectives do not apply to restrictions imposed in terms of sections 62(f) or 71 of the Criminal Procedure Act."

## Amendment of section 52 of Act 111 of 1998

16. Section 52 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) of the following paragraph after paragraph (a):

"(aA) is placed under house arrest between stipulated hours in order to reduce the possibility of committing criminal offence;"

- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) does community service in order to facilitate restoration of the relationship between the person concerned and the community;"

- (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

"(d) where possible takes up and remains in employment;"

- (d) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) takes part in treatment, correction, development and [support] care programmes;"

- (e) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

"(k) refrains from [using or] abusing alcohol [or drugs] or using illegal drugs;" and

(f) by the addition to subsection (1) of the following paragraph:

"(r) is subject to such other conditions as may be appropriate in the circumstances.".

#### **Amendment of section 57 of Act 111 of 1998**

17. Section 57 of the principal Act is hereby amended by the deletion of subsection (5).

#### **Amendment of section 58 of Act 111 of 1998, as amended by section 25 of Act 32 of 2001**

18. Section 58 of the principal Act is hereby amended by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) submit a report and advise the Correctional Supervision and Parole Board or the National Commissioner, as the case may be, on the desirability of—

- (i) applying for a change in the conditions of the community corrections imposed on such person; or
- (ii) applying for or issuing a warrant for the arrest of such a person.".

**Substitution of section 67 of Act 111 of 1998**

19. The following section is hereby substituted for section 67 of the principal Act:

**"Use or abuse of alcohol or drugs**

67. Where there is a reasonable suspicion that a person has [used or] abused alcohol or used illegal drugs in contravention of a condition set in terms of section 52(1)(k), a correctional official may require such a person to allow a designated medical officer to take a blood or urine sample in order to establish the presence and concentration of alcohol or drugs in the blood or urine."

**Amendment of section 68 of Act 111 of 1998**

20. Section 68 of the principal Act is hereby amended by the addition of the following subsection:

"(4) The Commissioner may appoint persons in terms of section 96(4) to assist correctional officials in such monitoring."

**Amendment of section 70 of Act 111 of 1998**

21. Section 70 of the principal Act is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

"(ii) instruct the person to appear before the court [**Correctional Supervision and Parole Board**] or other body which imposed the conditions of community corrections or, if a Correctional Supervision and Parole Board under whose jurisdiction such person may fall imposed the conditions of community corrections, before such Board; or";

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) A warrant issued in terms of subsection [(1)(c)] (1)(a)(iii) may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act.";

(c) by the substitution for subsection (4) of the following subsection:

"(4) If a person subject to community corrections fails to obey an instruction issued in terms of subsection (1)(b) or (3) the National Commissioner may issue a warrant in terms of subsection [(1)(c)] (1)(a)(iii) and act in terms of subsection (2).".

#### **Amendment of section 71 of Act 111 of 1998**

**22.** Section 71 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If such person fails to appear, the commissioner may issue a warrant in terms of section [**70(1)(c)**] 70(1)(a)(iii) for his or her arrest.".



**Amendment of section 73 of Act 111 of 1998, as amended by section 27 of Act 32 of 2001**

**23.** Section 73 of the principal Act is hereby amended—

(a) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

"(a) Subject to the conditions of community corrections set by such Board or court—

(i) **a prisoner]** an offender must be placed under correctional supervision or on day parole or on parole—

(i) on a date determined by the Correctional Supervision and Parole Board; or

(ii) in the case of **[a prisoner]** an offender sentenced to life **[imprisonment on day parole or on parole]**

incarceration, on a date to be determined by the **[court]** Minister, after receipt of a recommendation in this regard from the National Council."; and

(b) by the substitution for subsection (6) and (7) of the following subsections respectively:

"(6) (a) Subject to the provisions of paragraph (b), **[a prisoner]** an offender serving a determinate sentence may not be placed on parole until such **[prisoner]** offender has served either the stipulated non-parole period, or if no non-parole period was stipulated,

[half of the sentence, but **parole must be considered whenever a prisoner has served 25 years of a sentence or cumulative sentences]** the period as determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them.

(b) A person who has been sentenced to—

- (i) periodical **[imprisonment]** incarceration, must be detained periodically in a **[prison]** correctional centre as prescribed by regulation;
- (ii) **[imprisonment]** incarceration for corrective training, may be detained in a **[prison]** correctional centre for a period, **[of two years]** and may not be placed on parole until he or she has served such period, **[at least 12 months]** as determined by the Minister in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them;
- (iii) **[imprisonment]** incarceration for the prevention of crime, may be detained in a **[prison]** correctional centre for a period, **[of five years]** and may not be placed on parole until he or she has served **[at least two years and six months]** such period, as determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them;

- (iv) life **[imprisonment]** incarceration, may not be placed on parole until he or she has served **[at least 25 years of the sentence but a prisoner on reaching the age of 65 years may be placed on parole if he or she has served at least 15 years of such sentence]** a period as determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them;
- (v) **[imprisonment]** incarceration contemplated in section 51 or 52 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), may not be placed on parole unless he or she has served **[at least four fifths of the term of imprisonment imposed or 25 years, whichever is the shorter, but the court, when imposing imprisonment, may order that the prisoner be considered for placement on parole after he or she has served two thirds of such term]** a period as determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them.

(c) A person who has been declared an habitual criminal may be detained in a **[prison]** correctional centre for a period, **[of 15 years]** and may not be placed on parole until after a period, **[of at least seven years]** as determined by the Minister, in consultation with the National Council and after taking into

consideration the sentence framework and the Department's capacity to rehabilitate them.

(7) (a) A person sentenced to **[imprisonment]** incarceration under section 276(1)(i) of the Criminal Procedure Act, must serve **[at least one sixth of his or her sentence]** a period of his or her sentence as determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them, before being considered for placement under correctional supervision, unless the court has directed otherwise, but if more than one sentence has been imposed under section 276(1)(i) of the said Act, the person may not be placed under correctional supervision for a period exceeding five years.

(b) If a person has been sentenced to **[imprisonment]** incarceration under section 276(1)(i) of the Criminal Procedure Act, and to **[imprisonment]** incarceration for a period not exceeding five years as an alternative to a fine the person must serve **[at least one sixth of the effective sentences]** the period determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them, before being considered for placement under correctional supervision, unless the court has directed otherwise.

(c) If a person has been sentenced to **[imprisonment]** incarceration for—

- (i) a definite period under section 276(1)(b) of the Criminal Procedure Act;
- (ii) **[imprisonment]** incarceration under section 276(1)(i) of the said Act;
- (iii) a period not exceeding five years as an alternative to a fine, the person shall serve **[at least a quarter of the effective sentences imposed]** period of his or her sentence as determined by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them, or the non-parole period, if any, whichever is the longer, before being considered for placement under correctional supervision, unless **[the court has directed otherwise]** such sentence has been converted into correctional supervision in accordance with section 276A(3) of the said Act."

**Amendment of section 74 of Act 111 of 1998, as amended by section 28 of Act 32 of 2001**

**24.** Section 74 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) The Commissioner must designate **[one of]** the correctional **[officials]** official referred to in subsection (2)(e) to act as a secretary for a Board.”:

(b) by the substitution for subsection (8) of the following subsection:

"(8) A member of a Board who is not in the full-time service of the State, may receive such remuneration and allowances as the National Commissioner may, on the recommendation of the **[Commission for Administration]** Department for Public Service and Administration, determine **[with the concurrence of the Minister of Finance]**."

**Amendment of section 75 of Act 111 of 1998, as amended by section 29 of Act 32 of 2001**

**25.** Section 75 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A Correctional Supervision and Parole Board, having considered the report on any **[prisoner] offender** serving a determinate sentence **[exceeding 12]** of more than 24 months submitted to it by the Case Management Committee in terms of section 42 and in the light of any other information or argument, may—";

- (b) by the addition to subsection (3) of the following paragraph:

"(d) Despite paragraphs (a), (b) and (c), a Correctional Supervision and Parole Board may, whenever it acts in terms of subsection (1), request any inmate to present oral representations in order to clarify matters contained in his or her representation submitted to the Case Management Committee in terms of section 42(3)."



(c) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

"(a) place under correctional supervision or day parole or grant parole to **[a prisoner]** an offender serving a sentence of **[less than 12 months imprisonment]** 24 months or less incarceration and prescribe conditions in terms of section 52; or"; and

(d) by the substitution for subsection (8) of the following subsection—

"(8) A decision of the Board is final except that the Minister **[or]** the National Commissioner or the Inspector General for Correctional Services may refer the matter to the Correctional Supervision and Parole Review Board for reconsideration, in which case the record of the proceedings before the Board must be submitted to the Correctional Supervision and Parole Review Board."

#### **Amendment of section 76 of Act 111 of 1998**

**26.** Section 76 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) a director **[or a deputy director]** of Public Prosecutions or a person nominated by that director;".



## **Amendment of section 77 of Act 111 of 1998**

**27.** Section 77 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"On consideration of a record submitted in terms of section 75 and any submission which the Minister, National Commissioner, Inspector General for Correctional Services or **[person]** the inmate concerned may wish to place before the Correctional Supervision and Parole Review Board, as well as such other evidence or argument as is allowed, the Correctional Supervision and Parole Review Board must—".

## **Substitution of section 78 of Act 111 of 1998**

**28.** The following section is hereby substituted for section 78 of the principal Act:

### **"Powers of [court] Minister in respect of prisoners serving life sentences**

**78.** (1) Having considered the record of proceedings of the Correctional Supervision and Parole Board and its recommendations in the case of **[a prisoner]** an offender sentenced to life imprisonment, **[the court]** the National Council on Correctional Services may, subject to the provisions of section 73(6)(b)(iv), recommend to the Minister to grant parole or day parole or prescribe the conditions of community corrections in terms of section 52.

(2) If the [court] Minister refuses to grant parole or day parole in terms of subsection (1), [it] the Minister may make recommendations in respect of treatment, care, development and support of the [prisoner] offender which may contribute to improving the likelihood of future placement on parole or day parole.

(3) Where a Correctional Supervision and Parole Board acting in terms of section 73 recommends, in the case of a person sentenced to life imprisonment, that parole or day parole be withdrawn or that the conditions of community corrections imposed on such a person be amended, the [court] Minister, on advice of the National Council, must consider and make a decision upon the recommendation.

(4) Where the [court] Minister refuses or withdraws parole or day parole the matter must be reconsidered by the [court] Minister, on advice of the National Council, within two years."

### **Substitution of section 79 of Act 111 of 1998**

**29.** The following section is hereby substituted for section 79 of the principal Act:

#### **"Correctional supervision or parole on medical grounds**

**79.** Any person serving any sentence in a [prison] correctional centre and who, based on the written evidence of the medical practitioner

treating that person, is diagnosed as being in the final phase of any terminal disease or condition, and is considered by the Correctional Supervision and Parole Board or, in the case of a person serving a life sentence, by the Minister, as not being capable of committing crime in future, may be considered for placement under correctional supervision or on parole, by the National Commissioner, Correctional Supervision and Parole Board or the [court] Minister, as the case may be, to die a consolatory and dignified death."

#### **Amendment of section 80 of Act 111 of 1998**

**30.** Section 80 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Special remission in terms of this section may not result in the [prisoner] offender serving less than a stipulated non-parole period or [half of his or her original sentence] period stipulated by the Minister, in consultation with the National Council and after taking into consideration the sentence framework and the Department's capacity to rehabilitate them."

#### **Amendment of section 82 of Act 111 of 1998**

**31.** Section 82 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) at any time authorise the placement on correctional supervision or

parole of any sentenced **[prisoner]** inmate, subject to such conditions as may be recommended by the Correctional Supervision and Parole Board under whose jurisdiction such **[prisoner]** inmate may fall or, in the case of **[a prisoner]** an inmate serving a life sentence, by the **[court]** Minister; and".

### **Amendment of section 83 of Act 111 of 1998**

**32.** Section 83 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

(a) **[two]** three judges of the Supreme Court of Appeal of South Africa or of the High Court of South Africa appointed after consultation with the Chief Justice;" and

(b) by the substitution for subsection (4) of the following subsection:

"(4) The Minister must appoint one of the judges referred to in subsection (2)(a) as chairperson and the other two as **[vice-chairperson]** vice-chairpersons of the National Council."

### **Substitution of heading to Chapter IX of Act 111 of 1998**

**33.** The following heading is hereby substituted for the heading to Chapter IX of the principal Act:

**"THE [JUDICIAL INSPECTORATE] OFFICE OF THE INSPECTOR**

**GENERAL FOR CORRECTIONAL SERVICES"**

**Substitution of section 85 of Act 111 of 1998**

**34.** The following section is hereby substituted for section 85 of the principal Act:

**"Establishment of [Judicial Inspectorate] the Office of the Inspector-General for Correctional Services**

**85. (1)** The [Judicial Inspectorate of prisons] Office of the Inspector-General for Correctional Services is an [independent] independent office under the control of the Inspecting Judge.

(2) The object of the [Judicial Inspectorate] Office of the Inspector-General for Correctional Services is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions in prisons."

**Substitution of section 86 of Act 111 of 1998**

**35.** The following section is hereby substituted for section 86 of the principal Act:

**"[Inspecting Judge] Inspector General for Correctional Services**

86. (1) The President must appoint the **[Inspecting Judge] Inspector General for Correctional Services** for a fixed period who must be—
- (a) a judge of the High Court who is in active service as defined in section 1(1)(31) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); or
  - (b) **[a judge who has been discharged from active service in terms of section 3 of the said Act] a legal practitioner of not less than 10 years' experience in legal practice, on recommendation of the Minister.**

(2) An **[Inspecting Judge] Inspector General for Correctional Services** who is a judge in active service must be seconded from the Supreme Court of Appeal or the High Court and holds office as such during the period of active service or until the **[Inspecting Judge] Inspector General of Correctional Services** requests to be released to resume judicial duties.

- (3) The **[Inspecting Judge] Inspector General for Correctional Services** contemplated in—
- (a) subsection (1)(a) continues to receive the salary, allowances, benefits and privileges attached to the office of a judge; and
  - (b) subsection (1)(b) receives the salary, allowances, benefits and the privileges attached to the office of a judge of the High Court."

**Repeal of section 87 of Act 111 of 1998**

36. Section 87 of the principal Act is hereby repealed.

**Repeal of section 88 of Act 111 of 1998**

37. Section 88 of the principal Act is hereby repealed.

**Substitution of section 89 of Act 111 of 1998, as amended by section 32 of Act 32 of 2001**

38. The following section is hereby substituted for section 89 of the principal Act:

**"Appointment of staff**

**89. (1) The staff compliment of the Office of the Inspector-General for Correctional Services consists of—**

- (a) the Chief Executive Officer of the department who is seconded to such Office to assist the Inspector-General for Correctional Services in the performance of his or her functions in terms of this Act;**
- (b) such officers in the public service seconded to the Office of the Inspector-General for Correctional Services in terms of the laws governing the public service.**



(2) The conditions of service including salaries and allowances of such officers are regulated by the Public Service Act."

#### **Amendment of section 90 of Act 111 of 1998**

**39.** Section 90 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The **[Inspecting Judge] Inspector General for Correctional Services** inspects or arranges for the inspection of **[prisons] correctional centres** in order to report on the treatment of **[prisoners in prisons] inmates in correctional centres** and on conditions **[and any corrupt or dishonest practices in prisons]** in correctional centres."

(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

"(a) The **[Inspecting Judge] Inspector General for Correctional Services** must submit an annual report to the **[President and the] Minister**."

(c) by the deletion of subsections (7) and (8).

#### **Amendment of section 92 of Act 111 of 1998**

**40.** Section 92 of the principal Act is hereby amended by the substitution for subsections (1) (2) and (3) respectively of the following subsections:

"(1) The **[Inspecting Judge]** Chief Executive Officer must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an Independent **[Prison]** Correctional Centre Visitor for any **[prison or prisons]** correctional centre or correctional centres.

(2) An Independent Prison Visitor holds office for such period as the **[Inspecting Judge]** Chief Executive Officer may determine at the time of such appointment after consultation with the Inspector-General for Correctional Services.

(3) The service of an Independent Prison Visitor may be suspended or terminated in terms of any law regulating their conditions of employment.".

#### **Amendment of section 93 of Act 111 of 1998**

**41.** Section 93 of the principal Act is hereby amended by the deletion of subsection (8).

#### **Substitution of heading to Chapter XI of Act 111 of 1998**

**42.** The following heading is hereby substituted for the heading to Chapter XI of the principal Act:

**"[INTERNAL SERVICE EVALUATION AND ERADICATION AND  
PREVENTION OF CORRUPTION] COMPLIANCE MANAGEMENT"**

**Amendment of section 95 of Act 111 of 1998, as amended by section 34 of Act 32 of 2001**

**43.** The following section is hereby substituted for section 95 of the principal Act:

**"[Objectives and functions of internal service evaluation] Compliance monitoring**

**95. (1)** The National Commissioner must **[conduct an internal service evaluation]** monitor compliance to relevant prescriptions by means of internal auditing, performance auditing, inspections and investigations to promote the economical and efficient operation of the Department and to ensure that the objectives and principles of this Act are met.

(2) Such **[a service evaluation]** compliance monitoring must assess, at regular intervals, the effectiveness of internal control at national and **[provincial]** regional level, individual **[prisons]** correctional centres including **[joint venture prisons]** public-private partnership and community corrections, by—

- (a) determining whether the departmental operations are conducted effectively;
- (b) reviewing the reliability of financial, operational and management information;

- (c) ascertaining whether departmental assets and interests are controlled and safeguarded from losses;
- (d) assessing the effective utilisation of human and other resources; and
- (e) monitoring whether established objectives for programmes are being achieved[;
- (f) **suggesting measures to combat theft, fraud, corruption and any other dishonest practices or irregularities; and**
- (g) **investigating theft, fraud, corruption and any other dishonest practices or irregularities].**

(3) The National Commissioner must establish appropriate mechanisms for [internal service **evaluation**] compliance monitoring.

[(3A) (a) **The Commissioner must establish a unit to deal with matters in terms of subsections (2)(f) and (g) and (3).**

(b) **Members of this unit—**

- (i) **are responsible to initiate disciplinary proceedings resulting from any investigation in terms of subsection (2)(g); and**
- (ii) **may in the manner prescribed by regulation enter and search any departmental premises and seize any departmental record.**

(4) **The Commissioner must include in the annual report to Parliament, an account of the process and results of the internal service evaluation.**

(5) **The Commissioner must, on request, send a copy of all internal service evaluation reports to the Inspecting Judge.]".**

**Insertion of section 95A, 95B and 95C in Act 111 of 1998**

**44.** The following sections are hereby inserted in the principal Act, after section 95:

**"Departmental Investigation Unit**

**95A.** The National Commissioner must establish a unit to investigate theft, fraud, corruption and maladministration by correctional officials.

**Code enforcement**

**95B.** The National Commissioner must establish a unit to institute disciplinary procedures and to prosecute in disciplinary matters referred to in section 95A.

**Report of Commissioner**

**95C.** (1) The National Commissioner must include in the annual report to Parliament an account of the process and results of—

- (a) the compliance monitoring in terms of section 95;
- (b) the investigations contemplated in section 95A; and
- (c) the disciplinary proceedings contemplated in section 95B.

(2) The National Commissioner must, on request, send a

copy of any report or account contemplated in subsection (1) to the Inspector General for Correctional Services."

**Amendment of section 96 of Act 111 of 1998, as amended by section 25 of Act 32 of 2001**

**45.** Section 96 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) (a) Subject to the provisions of subsection (1), the relationship between the Department as employer and every correctional official in the service of the Department is regulated by the provisions of the Labour Relations Act and the Public Service Act.

(b) Notwithstanding item 6(2) of Schedule 8 to the Labour Relations Act, where the whole or part of the services of the Department is designated as an essential service in terms of section 71 of that Act, and an official who provides such service participate in a strike that does not comply with the provisions of chapter IV of that Act and the strike constitutes a threat to the safety of inmates, officials or the public, the official in question may be summarily dismissed, if such dismissal is substantively fair, as contemplated in item 6(1) to that Schedule."

(b) by the substitution for subsection (5) of the following subsection:

"(5) The provisions relating to the retirement resignation or discharge of correctional officials contained in the

Correctional Services Act, 1959 (Act 8 of 1959), remain in force unless amended in the Bargaining Council for the Department of Correctional Services in terms of the Labour Relations Act."

#### **Amendment of section 98 of Act 111 of 1998**

**46.** Section 98 of the principal Act is hereby amended by the substitution for the following section:

"Any professional correctional official appointed by the National Commissioner to work directly with **[prisoners]** inmates and persons subject to community corrections retains their professional **[independence]** discretion, but is still subject to all the prescripts applicable to correctional officials not in conflict with their ethical or professional code."

#### **Amendment of section 101 of Act 111 of 1998, as amended by section 37 of Act 32 of 2001**

**47.** Section 101 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word "or" at the end of paragraph (b), the addition of the word "or" to paragraph (c) and the addition of the following paragraph:

"(d) investigating theft, fraud, corruption and maladministration by correctional officials."; and

(b) by the substitution for subsection (2) of the following subsection:



"(2) Despite the provisions of subsection (1)—

- (a) a correctional official may not search another correctional official or seize his or her property without his or her consent or being authorised to do so by the Commissioner but a general authorisation to search other correctional officials may be granted to a correctional official who is required to act in order to control access to or maintain secure custody within a prison, or to give effect to subsection (1)(d); and
- (b) action cannot be taken in terms of subsection (1)(c) or (d) outside a prison unless a search warrant has been issued by a magistrate but a correctional official may act in terms of subsection (1)(c) or (d) without a warrant when he or she on reasonable grounds believes that—
  - (i) a warrant will be issued authorising action in terms of subsection (1)(c) or (d); and
  - (ii) the delay in obtaining such a warrant would defeat the object of the search."

#### **Amendment of section 123 of Act 111 of 1998**

**48.** Section 123 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) (a) Any person who is not satisfied with the decision of the National Commissioner to grant or refuse permission in terms of

subsections (2) and (3), may within 10 days after being informed of the decision refer the matter to the **[Inspecting Judge] Minister**.

**(b)** The **[Inspecting Judge] Minister** must confirm or set aside the decision."

#### **Substitution of section 124 of Act 111 of 1998**

**49.** The following section is hereby substituted for section 124 of the principal Act:

**"Unauthorised wearing of departmental dress or insignia or prescribed inmate dress**

**124.** Any unauthorised person who wears or uses—

**(a)** the departmental dress, distinctive badge or insignia of the Department or of a custody official; or

**(b)** the prescribed inmate dress,

or anything deceptively resembling them is guilty of an offence and liable on conviction to a fine or, in default of payment, to **[imprisonment] incarceration** for a period not exceeding **[six] 18** months or to such **[imprisonment] incarceration** without the option of a fine or both."

**Amendment of section 134 of Act 111 of 1998, as amended by section 41 of Act 32 of 2001**

**50.** Section 134 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (hh) of the following paragraph:

"(hh) the appointment and conditions of service, including the disciplinary code and procedures, of correctional officials and voluntary workers, excluding officials of the Senior Management Service as defined in the Regulations issued in terms of the Public Service Act, and all personnel matters pertaining to them;"

(b) by the deletion in subsection (1) of paragraph (ii);

(c) by the substitution in subsection (1) for paragraph (kkD) of the following paragraph:

"(kkD) the procedures for the detention of **[a prisoner]** an inmate sentenced to periodical [imprisonment] incarceration and for non-compliance of the terms of such incarceration;"

(d) by the substitution in subsection (2) for paragraph (ee) of the following paragraph:

"(ee) the conditions for the issuing, wearing and maintenance of articles of **[uniform]** departmental dress and equipment;"

(e) by the deletion of subparagraph (hh).

**Amendment of section 136 of Act 111 of 1998, as amended by section 42 of Act 32 of 2001**

51. Section 136 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) If a person is sentenced to life **[imprisonment]** incarceration after the commencement of Chapters IV, VI and VII while serving a life sentence imposed prior to the commencement, the matter must, **[after the prisoner has served 25 years accumulatively, be referred to the court which imposed the last sentence of life imprisonment for consideration of]** be referred to the Minister, who must in consultation with the National Council, consider him or her for placement under day parole or parole."

**Substitution of certain words in Act 111 of 1998**

52. The principal Act is hereby amended by the substitution for the words specified in Column 1, wherever they occur, of the words specified opposite thereto in Column 2.

Column 1	Column 2
"Area Manager"	"Area Commissioner"
"Commissioner"	"National Commissioner"
"Head of Prison"	"Head of a correctional centre"
"imprisonment"	"incarceration"

Column 1	Column 2
"Independent Prison Visitor"	"Independent Correctional Centre Visitor"
"Independent Prison Visitors"	"Independent Correctional Centre Visitors"
"Inspecting Judge"	"Inspector General for Correctional Services"
"joint venture prison"	"public-private partnership correctional centre"
"joint venture prisons"	"public-private partnership correctional centres"
"Judicial Inspectorate"	"Office of the Inspector General for Correctional Services"
"medical officer"	"Correctional medical officer"
"prison"	"correctional centre"
"prisons"	"correctional centres"
"prisoner"	"inmate"
"prisoners"	"inmates"
"Provincial Commissioner"	"Regional Commissioner"

### Short title

**53.** This Act is called the Correctional Services Amendment Act, 2007.

## **MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES AMENDMENT BILL, 2007**

1. The Amendment Bill will amend the Correctional Services Act, 1988 (Act No 111 of 1998) to be aligned with the White Paper on Correctional Services which arises out of a need for a long-term strategic policy and operational framework that recognises corrections as a societal responsibility and to gear the Department for appropriate programmes to serve a rehabilitation mission to ensure security of members of the Department, the inmates and the public at large.
2. The White Paper is setting a new direction with major challenges to both the broader society and the Department, to the broader society the main challenge is restoration of cohesion of both the family and community levels as the family is the primary level and the community institutions are the secondary level at which correction must necessarily take place.
3. The degree of dysfunctionality at these levels has to be addressed if the rate of new convictions is to decrease and the level of recidivism is to be curtailed.
4. The Department positioning itself at a tertiary level of intervention is looking forward to encouraging these basic societal instructions to recognise their strategic roles in nation building in general and in correction in particular, while building the appropriate institutional capacity to be able to deliver on our core mandate of the promotion

of social responsibility and human development, and the correction of offending behaviour.

5. The proposed Amendment Bill on Correctional Services, 2007 is the vehicle to amend the current legislative framework to create the opportunity to implement the principles endorsed in the White Paper, focussing on the core functions being redefined in terms of the White Paper as:

- |     |              |   |
|-----|--------------|---|
| 5.1 | Correction:  | Aiming at addressing the offending behaviour of sentenced persons;  |
| 5.2 | Security:    | Aiming at addressing the safety of inmates, officials and members of the public;  |
| 5.3 | Facilities:  | Ensuring that the Department has a long-term facilities strategy to ensure conditions consistent with human dignity for offenders;              |
| 5.4 | Care:        | Intending to address the well-being needs of inmates including access to social and psychological services;                                     |
| 5.5 | Development: | Providing for skills development in line with Departmental and national human resource needs  |
| 5.6 | After Care   | Intending to ensure successful re-integration through appropriate interventions directed at both the inmate and relevant societal institutions. |



**FINANCIAL IMPLICATIONS**

The implementation of the Bill will be covered by the Implementation plan of the White Paper within the normal Medium Term Expenditure Framework.

**PERSONS/BODIES CONSULTED**

- National Council on Correctional Services
- Justice Crime Prevention and Security Cluster

**PARLIAMENTARY PROCEDURE**

The State Law Advisors and the Department of Correctional Services are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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