

Government Gazette 14982

STATE PRESIDENT'S OFFICE

No. 1283
20 July 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

NO. 116 OF 1993: CRIMINAL MATTERS AMENDMENT ACT, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Correctional Services Act, 1959, so as to amend a certain definition and to delete others; to provide that a determinate sentence of imprisonment shall run concurrently with an indeterminate sentence of imprisonment imposed on a dangerous criminal; and to further regulate correctional supervision; to amend the Mental Health Act, 1973, so as to amend a certain definition and to delete others; to amend the Criminal Procedure Act, 1977, so as to amend the definition of "correctional supervision"; to provide for the declaration of certain persons as dangerous criminals; to provide that a dangerous criminal shall undergo imprisonment for an indefinite period; and to provide for the release of such dangerous criminal; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)

(Assented to 9 July 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985, section 1 of Act 92 of 1990, section 1 of Act 122 of 1991 and section 1 of Act 68 of 1993

1. Section 1 of the Correctional Services Act, 1959, is hereby amended-

(a) by the substitution for paragraph (c) of the definition of "correctional supervision" of the following paragraph:

"(c) his sentence has been converted into that under section 276A(3)(e)(ii), 286B(4)(b)(ii) or 287(4)(b) of the Criminal Procedure Act, 1977, or he has been placed under that under section 286B(5)(iii) or 287(4)(a) of the Criminal Procedure Act;";
and

(b) by the deletion of the definitions of "hospital prison for psychopaths", "psychopath" and "psychopathic disorder".

Amendment of section 20 of Act 8 of 1959, as substituted by section 9 of Act 92 of 1990 and amended by section 6 of Act 135 of 1991

2. Section 20 of the Correctional Services Act, 1959, is hereby amended by the deletion of paragraph (dA) of subsection (1).

Amendment of section 32 of Act 8 of 1959, as amended by section 14 of Act 101 of 1969 and section 12 of Act 68 of 1993

3. Section 32 of the Correctional Services Act, 1959, is hereby amended by the substitution for paragraph (a) of the proviso to subsection (2) of the following paragraph:

"(a) that any determinate sentence of imprisonment to be served by any person shall run concurrently with a life sentence or with an indeterminate sentence of imprisonment to be served by such person in consequence of being declared an habitual criminal *or dangerous criminal*; and".

Substitution of section 34 of Act 8 of 1959, as substituted by section 5 of Act 88 of 1977 and amended by section 12 of Act 92 of 1990

4. The following section is hereby substituted for section 34 of the Correctional Services Act, 1959:

"Mental cases

34. (1) A prisoner who, while serving a sentence of imprisonment, is removed to an institution as defined in section 1 of the Mental Health Act, 1973, **or a hospital prison for psychopaths** shall, as soon as he is fit for discharge therefrom, be returned by the authorities of such institution **or hospital prison for psychopaths, as the case may be** to complete the sentence which was interrupted by his removal to such

institution **or hospital prison for psychopaths**.

(2) The period during which such prisoner was detained in an institution referred to in subsection (1) **or a hospital prison for psychopaths** may, on the authority of the Minister, be reckoned as part of his sentence of imprisonment."

Substitution of section 77 of Act 8 of 1959, as substituted by section 8 of Act 88 of 1977

5. The following section is hereby substituted for section 77 of the Correctional Services Act, 1959:

"Training, treatment and labour of prisoners

77. Every prisoner sentenced to imprisonment and detained in a prison **including a hospital prison for psychopaths** shall, subject to the provisions of this Act and subject also to any special order of the court, be employed, trained and treated in such manner as the Commissioner may determine, and such a prisoner shall at all times perform such labour, tasks and other duties as may be assigned to him for the purpose of such employment, training or treatment or for any other purpose connected with such prison, by any member of the Department. "

Amendment of section 81 of Act 8 of 1959, as substituted by section 20 of Act 58 of 1978 and amended by section 3 of Act 54 of 1979 and section 23 of Act 68 of 1993

6. Section 81 of the Correctional Services Act, 1959, is hereby amended by the deletion of subsection (3).

Amendment of section 84B of Act 8 of 1959, as inserted by section 28 of Act 122 of 1991

7. Section 84B of the Correctional Services Act, 1959, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any probationer who is subject to correctional supervision under section 6(1)(c), 276(1)(h), 286B(4)(b)(ii) or (5)(iii) or 297(1)(a)(i)(ccA), (1)(b) or (4) of the Criminal Procedure Act, 1977, and who has been arrested and is being detained under the provisions of subsection (1) shall in such a case not be so detained for longer than 72 hours before he is brought before the court."

Amendment of section 1 of Act 18 of 1973, as amended by section 1 of Act 10 of 1978, section 1 of Act 38 of 1981, section 1 of Act 3 of 1984, section 2 of Act 34 of 1986, section 1 of Act 55 of 1987, section 6 of Act 51 of 1991 and section 1 of Act 19 of 1992

8. Section 1 of the Mental Health Act, 1973, is hereby amended-

(a) by the substitution for the definition of "mental illness" of the following definition:

"'mental illness' means any disorder or disability of the mind, and includes any mental disease *and* any arrested or incomplete development of the mind, **and any psychopathic disorder** and 'mentally ill' has a corresponding meaning;" and

(b) by the deletion of the definitions of "hospital prison for psychopaths" and "psychopathic disorder".

Substitution of section 27 of Act 18 of 1973

9. The following section is hereby substituted for section 27 of the Mental Health Act, 1973:

"Patients certified to be dangerous

27. If any person in respect of whom a reception order has been issued under this Chapter, or a State patient, is certified by two medical practitioners, of whom one shall be a psychiatrist, to be dangerous, the patient shall, if possible, be removed to and detained at a maximum security hospital, **or a hospital prison for psychopaths** and any order by any court of law directing that a State patient be detained in a **mental psychiatric** hospital or a prison shall, if the patient is so certified to be dangerous, be construed as directing that the patient be detained at a maximum security hospital **or a hospital prison for psychopaths, respectively**

Amendment of section 30 of Act 18 of 1973, as amended by section 2 of Act 38 of 1981

10. Section 30 of the Mental Health Act, 1973, is hereby amended-

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

"(1) Whenever it appears to the Minister that a convicted prisoner in a prison is mentally ill to such a degree that he should be detained in an institution **or in a hospital prison for psychopaths** and the prisoner is not under the sentence of death, he may order the magistrate of the district in which the prison is situated to cause the mental condition of the prisoner to be enquired into." and

(b) by the substitution for subsections (4) and (5) of the following

subsections, respectively:

"(4) If any such medical practitioner certifies that he is doubtful whether the prisoner is mentally ill to the degree referred to, the magistrate may direct that the prisoner be removed for observation to an institution, other than a licensed institution **or to a hospital prison for psychopaths, as the case may be.**

(5) A prisoner shall, while he is detained in an institution **or a hospital prison for psychopaths** under subsection (4), be deemed to be in the lawful custody of the person in charge of the prison in which he was detained immediately prior to his removal."

Substitution of section 31 of Act 18 of 1973

11. The following section is hereby substituted for section 31 of the Mental Health Act, 1973:

"Procedure where prisoner removed for observation is found to be mentally ill

31. (1) If the magistrate is satisfied that a prisoner removed under section 30(4) for observation is mentally ill to the degree referred to in section 30(1), he shall, pending a direction under subsection (2) of this section, make an order for the further detention of the prisoner in the institution **or hospital prison** in question.

(2) When an order is made under subsection (1), the Minister shall direct either that the prisoner be detained in the institution **or hospital prison** in question or that he be removed to an institution **or hospital prison for psychopaths** specified by the Minister.

(3) The magistrate making the order under subsection (1) shall without delay transmit to the Director-General a copy of the order, together with a copy of any medical certificate referred to in section 30(4) and of any report relating to the prisoner by the superintendent of the institution **or the person in charge of the hospital prison in question, as the case may be** and of the warrant under which the prisoner was detained in prison.

(4) A prisoner shall, subject to the provisions of section 34 of the **Prisons Correctional Services Act, 1959 (Act No. 8 of 1959)**, be detained in the institution **or hospital prison** referred to in subsection (2) or in any other institution **or hospital prison** to which he may be transferred."

Amendment of section 32 of Act 18 of 1973

12. Section 32 of the Mental Health Act, 1973, is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:

"(3) The Minister shall direct that the prisoner concerned be removed to an institution **or hospital prison for psychopaths** specified by the Minister, whereupon the prisoner shall be removed to and be received at such institution **or hospital prison, as the case may be.**

(4) A prisoner shall, subject to the provisions of section 34 of the **Prisons Correctional Services Act, 1959 (Act No. 8 of 1959)**, be detained in the institution **or hospital prison** referred to in subsection (3) or in any other institution **or hospital prison** to which he may be transferred."

Substitution of section 33 of Act 18 of 1973

13. The following section is hereby substituted for section 33 of the Mental Health Act, 1973:

"Procedure on recovery of mentally ill prisoner

33. If two medical practitioners certify in writing that a mentally ill prisoner in respect of whom a direction has been issued that he be detained in an institution **or prison hospital for psychopaths** has recovered to such an extent that his detention in the institution **or prison hospital for psychopaths** is no longer necessary, such prisoner shall be dealt with under the provisions of section 34 of the **Prisons Correctional Services Act, 1959 (Act No. 8 of 1959)**."

Amendment of section 34 of Act 18 of 1973

14. Section 34 of the Mental Health Act, 1973, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If one month before the expiry of his sentence of imprisonment such prisoner is still mentally ill to such a degree that it is necessary that he be detained in an institution, **or hospital prison for psychopaths** the superintendent or other custodian of the prisoner shall without delay transmit a report as to his mental condition, together with such other documents as may be deemed necessary, to the official curator ad litem, who shall without delay transmit the report and documents to the registrar of the court for the consideration of a judge in chambers."

Amendment of section 77 of Act 18 of 1973, as amended by section 3 of Act 36 of 1977

15. Section 77 of the Mental Health Act, 1973, is hereby amended by the deletion of paragraph (d) of subsection (1).

Amendment of section 1 of Act 51 of 1977, as amended by section 1 of Act 107 of 1990, section 1 of Act 5 of 1991 and section 35 of Act 122 of 1991

16. Section 1 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (c) of the definition of "correctional supervision" of the following paragraph:

"(c) his sentence has been converted into that under section 276A(3)(e)(ii), 286B(4)(b)(ii) or 287(4)(b) or he has been placed under that under section 286B(S)(iii) or 287(4)(a);".

Amendment of section 79 of Act 51 of 1977, as amended by section 4 of Act 4 of 1992

17. Section 79 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (9) of the following subsection:

"(9) The **Secretary for Health** *Director-General: National Health and Population Development* shall compile and keep a list of psychiatrists who are prepared to conduct any enquiry under this section *and section 286A(3)*, and shall provide the registrars of the several divisions of the supreme court and all clerks of magistrates' courts with a copy thereof."

Amendment of section 114 of Act 51 of 1977

18. Section 114 of the Criminal Procedure Act, 1977, is hereby amended-

(a) by the deletion of the word "or" at the end of paragraph (a) of subsection (1); and

(b) by the addition of the word "or" at the end of paragraph (b) of subsection (1) and the addition to the said subsection of the following paragraph:

"(c) *that the accused is a person referred to in section 286A(1)*,".

Amendment of section 116 of Act 51 of 1977

19. Section 116 of the Criminal Procedure Act, 1977, is hereby amended-

(a) by the deletion of the word "or" at the end of paragraph (a) of subsection (1); and

(b) by the addition of the word "or" at the end of paragraph (b) of subsection (1) and the addition to the said subsection of the following paragraph:

"(c) that the accused is a person referred to in section 286A(1),".

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990, section 41 of Act 122 of 1991 and section 18 of Act 139 of 1992

20. Section 276 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) imprisonment, including imprisonment for life or imprisonment for an indefinite period as referred to in section 286B(1);".

Insertion of sections 286A and 286B in Act 51 of 1977

21. The following sections are hereby inserted in the Criminal Procedure Act, 1977, after section 286:

"Declaration of certain persons as dangerous criminals

286A. (1) Subject to the provisions of subsections (2), (3) and (4), a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person represents a danger to the physical or mental well-being of other persons and that the community should be protected against him, declare him a dangerous criminal.

(2) (a) If it appears to a court referred to in subsection (1) or if it is alleged before such court that the accused is a dangerous criminal, the court may after conviction direct that the matter be enquired into and be reported on in accordance with the provisions of subsection (3).

(b) Before the court commits an accused for an enquiry in terms of subsection (3), the court shall inform such accused of its intention and explain to him the provisions of this section and of section 286B as well as the gravity of those provisions.

(3) (a) Where a court issues a direction under subsection (2)(a), the relevant enquiry shall be conducted and be reported on-

(i) by the medical superintendent of a psychiatric hospital

designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court; and

(ii) by a psychiatrist appointed by the accused if he so wishes.

(b) (i) The court may for the purposes of such enquiry commit the accused to a psychiatric hospital or other place designated by the court, for such periods, not exceeding 30 days at a time, as the court may from time to time determine, and if an accused is in custody when he is so committed, he shall, while he is so committed, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such committal.

(ii) When the period of committal is extended for the first time under subparagraph (i), such extension may be granted in the absence of the accused unless the accused or his legal representative requests otherwise.

(c) The relevant report shall be in writing and shall be submitted in triplicate to the registrar or the clerk of the court, as the case may be, who shall make a copy thereof available to the prosecutor and the accused or his legal representative.

(d) The report shall-

(i) include a description of the nature of the enquiry; and

(ii) include a finding as to the question whether the accused represents a danger to the physical or mental well-being of other persons.

(e) If the persons conducting the enquiry are not unanimous in their finding under paragraph (d)(ii), such fact shall be mentioned in the report and each of such persons shall give his finding on the matter in question.

(f) Subject to the provisions of paragraph (g), the contents of the report shall be admissible in evidence at criminal proceedings.

(g) A statement made by an accused at the enquiry shall not be admissible in evidence against the accused at criminal proceedings, except to the extent to which it may be relevant to the determination of the question whether the accused is a dangerous criminal or not, in which event such statement shall be admissible notwithstanding that it may otherwise be inadmissible.

(h) A psychiatrist appointed under paragraph (a), other than a psychiatrist appointed by an accused, shall, subject to the provisions of paragraph (i), be appointed from the list of psychiatrists referred to in section 79(9).

(i) Where the list compiled and kept in terms of section 79(9) does not include a sufficient number of psychiatrists who may conveniently be appointed for any enquiry under this subsection, a psychiatrist may be appointed for the purposes of such enquiry notwithstanding that his name does not appear on such list.

(j) A psychiatrist designated or appointed under paragraph (a) and who is not in the full-time service of the State, shall be compensated for his services in connection with the enquiry, including giving evidence, from public funds in accordance with a tariff determined by the Minister in consultation with the Minister of State Expenditure.

(k) For the purposes of this subsection a psychiatrist means a person registered as a psychiatrist under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974).

(4) (a) If the finding contained in the report is the unanimous finding of the persons who under subsection (3) conducted the enquiry, and the finding is not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.

(b) If the said finding is not unanimous or, if unanimous, is disputed by the prosecutor or the accused, the court shall determine the matter after hearing evidence, and the prosecutor and the accused may to that end present evidence to the court, including the evidence of any person who under subsection (3)(a) conducted the enquiry.

(c) Where the said finding is disputed, the party disputing the finding may subpoena and cross-examine any person who under subsection (3)(a) conducted the enquiry.

Imprisonment for indefinite period

286B. (1) The court which declares a person a dangerous criminal

(a) sentence such person to undergo imprisonment for an indefinite period; and

(b) direct that such person be brought before the court on the expiration of a period determined by it, which shall not exceed the jurisdiction of the court.

(2) A person sentenced under subsection (1) to undergo imprisonment for an indefinite period shall, notwithstanding the provisions of subsection (1)(b) but subject to the provisions of subsection (3) within seven days after the expiration of the period contemplated in subsection (1)(b) be brought before the court which sentenced him in order to enable such court

to reconsider the said sentence: Provided that in the absence of the judicial officer who sentenced the person any other judicial officer of that court may, after consideration of the evidence recorded and in the presence of the person, make such order as the judicial officer who is absent could lawfully have made in the proceedings in question if he had not been absent.

(3) (a) The Commissioner may, if he is of the opinion that owing to practical or other considerations it is desirable that a court other than the court which sentenced the person should reconsider such sentence after the expiration of the period contemplated in subsection (1)(b), with the concurrence of the attorney-general in whose jurisdiction such other court is situated, apply to the registrar or to the clerk of the court, as the case may be, of the other court to have such person appear before the other court for that purpose: Provided that such sentence shall only be reconsidered by a court with jurisdiction equal to that of the court which sentenced the person.

(b) On receipt of any application referred to in paragraph (a), the registrar or the clerk of the court, as the case may be, shall, after consultation with the prosecutor, set the matter down for a date which shall not be later than seven days after the expiration of the period contemplated in subsection (1)(b).

(c) The registrar or the clerk of the court, as the case may be, shall for the purpose of the reconsideration of the sentence-

- (i) within a reasonable time before the date contemplated in paragraph (b) submit the case record to the judicial officer who is to reconsider the sentence; and*
- (ii) inform the Commissioner in writing of the date for which the matter has been set down.*

(4) (a) Whenever a court reconsiders a sentence in terms of this section, it shall have the same powers as it would have had if it were considering sentence after conviction of a person and the procedure adopted at such proceedings shall apply mutatis mutandis during such reconsideration: Provided that the court shall make no finding before it has considered a report of a parole board as contemplated in section SC of the Correctional Services Act, 1959 (Act No. 8 of 1959).

(b) After a court has considered a sentence in terms of this section, it may-

- (i) confirm the sentence of imprisonment for an indefinite period, in which case the court shall direct that such person be brought before the court on the expiration of a further*

period determined by it, which shall not exceed the jurisdiction of the court;

(ii) convert the sentence into correctional supervision on the conditions it deems fit; or

(iii) release the person unconditionally or on such conditions as it deems fit.

(5) A court which has converted the sentence of a person under subsection (4)(b)(ii) may, whether differently constituted or not-

(a) at any time, if it is found from a motivated recommendation by the Commissioner that that person is not fit to be subject to correctional supervision; or

(b) after such person has been brought before the court in terms of section 84B of the Correctional Services Act, 1959 (Act No. 8 of 1959), reconsider that sentence and-

(i) confirm the sentence of imprisonment for an indefinite period, in which case the court shall direct that such person be brought before the court on the expiration of a further period determined by it, which shall not exceed the jurisdiction of the court;

(ii) release the person unconditionally or on such conditions as it deems fit; or

(iii) where the person is brought before the court in terms of paragraph (b), again place the person under correctional supervision on the conditions it deems fit and for a period which shall not exceed the unexpired portion of the period of correctional supervision as converted in terms of subsection (4)(b) (ii).

(6) For the purposes of subsection (4)(b)(i) or (S)(i), it shall not be regarded as exceeding the jurisdiction of the regional court if the further period contemplated in those subsections and the period contemplated in subsection (1)(b), together exceed such court's jurisdiction.

(7) At the expiration of the further period contemplated in subsection (4)(b)(i) or (S)(i), the provisions of subsections (2) up to and including (6), as well as of this subsection, shall mutatis mutandis apply."

Short title and commencement

22. (1) This Act shall be called the Criminal Matters Amendment Act,

1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.