

REPUBLIC OF SOUTH AFRICA

PAROLE AND CORRECTIONAL SUPERVISION AMENDMENT BILL

(As amended by the Portfolio Committee on Correctional Services (National Assembly))

(MINISTER OF CORRECTIONAL SERVICES)

[B 57B—97]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP PAROOL EN KORREKTIEWE TOESIG

(Soos gewysig deur die Portefeuljekomitee oor Korrektiewe Dienste (Nasionale Vergadering))

(MINISTER VAN KORREKTIEWE DIENSTE)

[W 57B—97]

ISBN 0 621 27425 9

No. of copies printed 3 000

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.

BILL

To amend the Correctional Services Act, 1959, so as to define certain expressions and to delete a definition; to further regulate the powers of institutional committees; to provide anew for the establishment of parole boards; to further regulate placement under correctional supervision, on parole and on day parole; and to further regulate special remission of sentence; to amend the Criminal Procedure Act, 1977, so as to further regulate correctional supervision; and to make provision that a court sentencing an offender to a period of imprisonment may fix a non-parole-period; and to provide for matters in connection therewith.

BE IT ENACTED by the 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, section 1 of Act 68 of 1993, section 1 of Act 116 of 1993, section 1 of Act 135 of 1993 and section 1 of Act 79 of 1996

1. Section 1 of the Correctional Services Act, 1959 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “credits”;
- (b) by the insertion after the definition of “National Advisory Council” of the following definition:

“ ‘non-parole-period’ means a non-parole-period contemplated in section 276B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);”; and
- (c) by the insertion after the definition of “parole” of the following definition:

“ ‘parolee’ means any person who is placed on parole;”.

Amendment of section 5A of Act 8 of 1959, as inserted by section 3 of Act 22 of 1980 and amended by section 6 of Act 122 of 1991 and section 3 of Act 68 of 1993

2. Section 5A of the principal Act is hereby amended—

- (a) by the insertion after subsection (3) of the following subsection:
- “(4) (a) An institutional committee may establish one or more subcommittees to perform the functions and duties which may be entrusted to or imposed upon the subcommittee by the institutional committee.
- (b) A subcommittee shall consist of so many members of the institutional committee as the institutional committee may determine and of whom one shall be designated by the institutional committee as chairman of that subcommittee.”; and
- (b) by the deletion of subsection (5).

Amendment of section 5C of Act 8 of 1959, as inserted by section 4 of Act 68 of 1993 and amended by section 15 of Act 135 of 1993 and section 8 of Act 79 of 1996

3. Section 5C of the principal Act is hereby amended—

- (a) by the addition of the following paragraph to subsection (1), the existing subsection becoming paragraph (a):
- “(b) The Minister may—
- (i) declare the name by which each parole board shall be known;
- (ii) determine the seat for each parole board;
- (iii) define the area of jurisdiction of each parole board;
- (iv) increase or decrease the area of jurisdiction of any parole board.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) (a) The Minister shall appoint, as members of a parole board—
- (i) a chairman;
- (ii) a vice-chairman;
- (iii) an official of the South African Police Service nominated by the National Commissioner of the South African Police Service;
- (iv) an official of the Department of Justice and an alternate, with a legal background, nominated by the Director-General of the Department of Justice;
- (v) two officials of the Department nominated by the Commissioner; and
- (vi) two members of the community.
- (b) The Commissioner shall designate a correctional official referred to in section 2 to act as secretary for a parole board.”;
- (c) by the insertion after subsection (2) of the following subsections:
- “(2A) If the chairman is absent from a meeting of the parole board, the vice-chairman shall preside at that meeting.
- (2B) A quorum for a meeting of a parole board shall be five members, including the chairman or vice-chairman, an official of the Department and an official of the Department of Justice.
- (2C) Any decision of a parole board shall be taken by resolution of the majority of the members present at any meeting of that parole board, and, in the event of equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote as a member of the parole board.”; and
- (d) by the addition of the following paragraphs to subsection (3), the existing subsection becoming paragraph (a):
- “(b) A member of a parole board may at any time resign by tendering his resignation in writing to the Minister.
- (c) The Minister may remove a member of a parole board from office on the grounds of misbehaviour, incapacity or incompetence: Provided that such action by the Minister shall not prohibit disciplinary action against officials in the full-time service of the State as provided for in their conditions of service.
- (d) If any member of a parole board tenders his resignation, is removed from office or dies, the Minister may fill the vacancy by appointing a person in accordance with subsection (2) for the unexpired portion of the term of office of his predecessor, or may allow the office which became vacant as a result of the resignation, removal or death to remain vacant.”.

Repeal of section 22A of Act 8 of 1959

4. Section 22A of the principal Act is hereby repealed.

Amendment of section 32 of Act 8 of 1959, as amended by section 14 of Act 101 of 1969, section 12 of Act 68 of 1993, section 3 of Act 116 of 1993 and section 15 of Act 129 of 1993

5

5. Section 32 of the principal Act is hereby amended—

(a) by the substitution in subsection (2A) for the words preceding the proviso of the following words:

“**[When]** If a person receives more than one sentence of correctional supervision referred to in section 276(1)(h) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or receives additional sentences of correctional supervision while serving a sentence of correctional supervision referred to in section 276(1)(h) of the Criminal Procedure Act, 1977, each such sentence shall be served the one after the expiration, setting aside or remission of the other in such order as the Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs that such sentences shall run concurrently”; and

(b) by the insertion after subsection (2A) of the following subsections:

“(2B) If a probationer is sentenced to imprisonment for an offence committed before the commencement of the correctional supervision, the correctional supervision shall be postponed until placement under correctional supervision has again been approved or until the expiration, setting aside or remission of the sentence of imprisonment.

(2C) If a probationer is placed on parole, the correctional supervision shall be served before the parole may commence.

(2D) If a probationer or parolee is sentenced to periodical imprisonment, the sentence of periodical imprisonment and the correctional supervision or parole, as the case may be, shall be served simultaneously, unless the court directs otherwise.

(2E) If a probationer or parolee is served with a warrant of detention for contempt of court, the correctional supervision or parole, as the case may be, shall be postponed for the period specified in the warrant of detention.

(2F) If a parolee is sentenced to imprisonment for an offence committed before the commencement of the parole, the parole shall be regarded as cancelled and the matter be referred to the parole board concerned for consideration under section 65.”.

Amendment of section 62 of Act 8 of 1959, as substituted by section 21 of Act 68 of 1993

6. Section 62 of the principal Act is hereby amended—

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

“(a) make decisions with regard to **[the credits to be awarded to him]** his treatment, training and classification and the regulation of his conduct according to prescribed programmes, classification and procedures;”;

(b) by the deletion of the word “and” at the end of paragraph (b) of subsection (1) and the insertion after paragraph (b) of the said subsection of the following paragraph:

“(bA) submit a report to the Commissioner in respect of every prisoner sentenced to imprisonment for a period not exceeding 12 months and to a parole board in respect of every prisoner sentenced to imprisonment exceeding 12 months, regarding—

(i) the nature of the offence and stating any remarks made by the court in question at the time of the imposition of sentence if made available to the Department;

- (ii) the conduct, adaptation, training, aptitude, industry and physical and mental state of such prisoner;
 - (iii) the possibility of his relapse into crime;
 - (iv) the possible placement of such prisoner under correctional supervision by virtue of a sentence contemplated in section 276(1)(i) or 287(4)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or by virtue of the conversion of such prisoner's sentence into correctional supervision under section 276A(3)(e)(ii) or 287(4)(b) of the said Act;
 - (v) the possible placement of such prisoner on parole or on day parole, and the period for and the conditions under which such prisoner should be so placed; and
 - (vi) such other matters as the Commissioner or a parole board may request; and"; and
- (c) by the substitution for subsection (2) of the following subsection:
- “(2) (a) If a prisoner is not satisfied with the decision or recommendation of the institutional committee on the matters referred to in subsection (1)(a) and (b), he may submit a complaint or request in the manner prescribed by regulation after the reasons for the decision or recommendation have been made known to him.
- (b) A prisoner shall be informed of the contents of the report submitted by the institutional committee to the Commissioner or a parole board, and be afforded the opportunity to submit written representations to the Commissioner or parole board.”.

Substitution of section 63 of Act 8 of 1959, as substituted by section 21 of Act 68 of 1993 and amended by section 4 of Act 173 of 1993

7. The following section is hereby substituted for section 63 of the principal Act:

“Functions of parole boards

- 63.** (1) A parole board shall study each report on a prisoner under its jurisdiction submitted to it by an institutional committee in terms of section 62(1)(bA).
- (2) A parole board shall, in respect of any prisoner serving a sentence of life imprisonment, submit a report with recommendations on the possible placement of the prisoner concerned on parole or on day parole, and the conditions under which the prisoner may be so placed, to the court which sentenced the prisoner.
- (3) (a) A parole board may, in respect of any prisoner serving a determinate sentence exceeding 12 months, having regard to the protection of the community, the nature of the offence and any remarks made by the court in question, if made available, approve that the prisoner be placed under correctional supervision, on parole or on day parole.
- (b) If a parole board approves as contemplated in paragraph (a), it shall determine the period for and the conditions on which the prisoner shall be so placed.
- (4) A parole board may, in respect of a prisoner who has been declared an habitual criminal, approve that the prisoner be placed on parole for a period of three years on such conditions as it may determine, if the report from the institutional committee indicates that—
- (a) there is a reasonable probability that the prisoner will in future abstain from crime and lead a useful and industrious life; or
 - (b) for any other reason, it is desirable to place the prisoner on parole.
- (5) A parole board shall, in respect of a prisoner who has been declared a dangerous criminal under section 286A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), submit a report to the court in question on the relevant date.

- (6) (a) A parole board shall not submit a report as contemplated in subsection (2) or (5) or approve as contemplated in subsection (3) or (4), unless it has given the prisoner concerned an opportunity to submit written representations or to appear in person.
- (b) A prisoner who appears before a parole board may be represented by any person authorised thereto by the prisoner to make submissions on the prisoner's placement: Provided that the prisoner may not be represented by a fellow prisoner, a correctional official or an official of the South African Police Service or of the Department of Justice.
- (7) (a) A prisoner referred to in subsection (2) shall be informed by the parole board of its recommendation and shall confirm by means of his signature on the report that the recommendation of the parole board has been conveyed to him.
- (b) Such prisoner shall be afforded an opportunity to submit written representations with regard to the recommendation to the court, and the parole board shall submit the representations to the court together with its report contemplated in subsection (1)(c).
- (8) If, after a prisoner's placement under correctional supervision, on parole or on day parole has been approved but before the prisoner is so placed, circumstances regarding his placement change to such an extent that placement no longer is advisable, the placement shall be deferred until the parole board again approves placement.
- (9) If a parole board disapproves or cancels correctional supervision, parole or day parole, it shall reconsider the matter within a period of two years."

Insertion of section 64A in Act 8 of 1959

8. The following sections are hereby inserted in the principal Act after section 64:

"Powers of Commissioner with regard to correctional supervision, parole and day parole

64A. (1) The Commissioner may approve the placement of any prisoner sentenced to imprisonment for a period not exceeding 12 months under correctional supervision, on parole or on day parole.

(2) For the purposes of subsection (1), the provisions of section 63(3), (6) and (8) shall *mutatis mutandis* apply.

Power of court with regard to parole and day parole in respect of prisoner serving sentence of life imprisonment

64B. (1) A court to which a report has been submitted in terms of section 63(2) may order that the prisoner concerned be placed on parole or on day parole and determine the conditions on which the prisoner shall be so placed.

(2) If the court decides that the prisoner should not be placed on parole or on day parole, it shall determine the period of imprisonment which the prisoner shall serve before the prisoner may again be considered for placement on parole or on day parole.

Complainant may make representations with regard to placement on parole

64C. (1) When a court sentences a person to imprisonment for an offence mentioned in Schedule 2, it shall inform the complainant or, in the case of murder, any relative of the deceased present that they have a right to make representations when placement of the prisoner on parole or on day parole is considered or to attend any relevant meeting of the parole board.

(2) If the complainant or a relative intends to make such representations or wishes to attend the meeting of the parole board, he has to inform the Commissioner thereof in the prescribed manner and keep the Commissioner informed of any change of address.

(3) The Commissioner shall inform the parole board in question accordingly and that parole board shall inform the complainant or relative in writing when and to whom he may make representations or when and where a meeting will take place.”. 5

Amendment of section 65 of Act 8 of 1959, as inserted by section 21 of Act 68 of 1993

9. Section 65 of the principal Act is hereby amended— 10

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

“(2) A prisoner may, in accordance with the provisions of this section **[after the report submitted by the parole board in terms of section 63 has been studied]** be placed on parole before the expiration of his term of imprisonment if he accepts the conditions of such placement.”; 15

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

“(b) When the Commissioner, a parole board or the court approves placement on parole, or when a parole board submits a report as contemplated in section 63(2), he or it may in addition to any other condition which may be determined or recommended, also determine or recommend that the prisoner— 20

- (i) be subjected to such monitoring as he or it deems fit;
- (ii) be placed under house arrest;
- (iii) does community service; 25
- (iv) seeks employment;
- (v) takes up employment and remains employed;
- (vi) takes part in treatment, development and support programmes;
- (vii) be restricted to one or more magisterial districts;
- (viii) lives at a fixed address; 30
- (ix) refrains from going to any specific place;
- (x) refrains from contacting any specific person by word or action.”.

(c) by the deletion of paragraphs (c) and (d) of subsection (3);

(d) by the substitution for subsections (4), (5) and (6) of the following subsections, respectively: 35

“(4) (a) A prisoner serving a determinate sentence shall—

- (i) if a non-parole-period was fixed, not be considered for placement on parole unless he has served the non-parole-period or half of his term of imprisonment, whichever is the longer;
- (ii) if a non-parole-period was not fixed, not be considered for placement on parole unless he has served half of his term of imprisonment: 40

Provided that no such prisoner shall serve more than 25 years before being considered for placement on parole.

(b) A person who has **[under any law]** been sentenced to— 45

- (i) periodical imprisonment, shall be detained periodically in a prison in the manner prescribed by regulation;
- (ii) imprisonment for corrective training, **[shall]** may be detained in a prison for a period of **[four]** two years and shall not be placed on parole unless he has served at least 12 months of his sentence; 50
- (iii) imprisonment for the prevention of crime, **[shall]** may be detained in a prison for a period of **[eight]** five years and shall not be placed on parole unless he has served at least two years and six months of his sentence;

- (iv) an indeterminate sentence, by virtue of his having been declared an habitual criminal, shall be detained in a prison until, after a period of at least seven years, he is placed on parole;
- (v) life imprisonment, shall not be placed on parole until he has served at least 25 years of his sentence: Provided that he may be placed on parole when he has reached the age of 65 years and he has served at least 15 years of his sentence; 5
- (vi) imprisonment contemplated in section 52(2) of the Criminal Law Amendment Act, 1997, shall not be placed on parole unless he has served at least four fifths of the terms of imprisonment imposed or 25 years, whichever is the shorter: Provided that the court when imposing such imprisonment may order that the prisoner be considered for placement on parole after he has served two thirds of the term of imprisonment. 10
- (5) (a) If any parolee fails to comply with any condition of his parole the Commissioner may issue a warrant for the arrest of the parolee, which may be executed by a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which shall serve as authority for the detention of the parolee. 15
- (b) Within 72 hours after the arrest of the parolee and after the Commissioner has ascertained all the relevant facts and is still of the opinion that the parolee has breached the conditions of his parole the Commissioner shall refer the matter to the parole board, if the parolee was placed on parole by a parole board. 20
- (c) The Commissioner or the parole board, as the case may be, may, if it is in the interest of the parolee in respect of his treatment, rehabilitation or integration into the community or if it is in the interest of the community — 25
- (i) cancel the parole;
- (ii) amend any condition of the parole; or 30
- (iii) add any condition.
- (d) Before acting in terms of paragraph (c) the Commissioner or the parole board shall make the reasons for the proposed action known to the prisoner and shall afford him an opportunity to submit oral or written representations in regard thereto: Provided that the prisoner may be represented as provided for in section 63(6)(b). 35
- (e) If the prisoner does not accept the amended or new conditions, his placement on parole shall be cancelled, after which he shall be detained in a prison for the unexpired period of his sentence of imprisonment: Provided that the Commissioner or the parole board may at a later date again place such prisoner on parole should the prisoner accept the amended or other conditions. 40
- (6) If a person serving a sentence of life imprisonment has breached a condition of his parole the Commissioner shall refer the matter to the court which sentenced the prisoner, which shall determine the period of imprisonment that such a prisoner shall serve before the prisoner may again be considered for parole.”; and 45
- (e) by the deletion of subsections (7), (8) and (9).

Substitution of section 68 of Act 8 of 1959, as substituted by section 11 of Act 135 of 1993 50

10. The following section is hereby substituted for section 68 of the principal Act:

“Special remission of sentence by Commissioner

68. (1) Notwithstanding any provision to the contrary the Commissioner may grant to a prisoner, parolee or probationer who has rendered highly meritorious service a special remission of sentence not exceeding two years 55

either unconditionally or on such conditions as he may determine: Provided that such special remission of sentence may not be deducted from the non-parole-period.

(2) Special remission contemplated in subsection (1) shall not advance an approved date of placement under correctional supervision or on parole unless the Commissioner, a parole board or the court, as the case may be, directs otherwise.”. 5

Substitution of section 69 of Act 8 of 1959, as substituted by section 12 of Act 135 of 1993

11. The following section is hereby substituted for section 69 of the principal Act: 10

“Placement under correctional supervision or on parole on medical grounds

69. Any person serving any sentence in a prison and who, based on the evidence of the medical practitioner treating the person, suffers from any terminal sickness may be considered for placement under correctional supervision or on parole on medical grounds by the Commissioner, a parole board or the court, as the case may be.”. 15

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

12. Section 84 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) Every probationer shall be subject to such monitoring, community service, house arrest, placement in employment, performance of service, payment of compensation to the victim and rehabilitation or other programmes as may be determined by the court, [or] the Commissioner or a parole board or prescribed by or under this Act, and to any such other form of treatment, control or supervision, including supervision by a probation officer, as the Commissioner or the parole board may determine after consultation with the social welfare authority concerned in order to realize the objects of correctional supervision.”. 25

Amendment of section 84B of Act 8 of 1959, as inserted by section 28 of Act 122 of 1991 and amended by section 7 of Act 116 of 1993 30

13. Section 84B of the principal Act is hereby amended—

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

“If the Commissioner is satisfied that a probationer has failed to comply with any condition to which he is subject in relation to correctional supervision either by agreement or as may be determined by the court, [or] the Commissioner or a parole board, he may issue a warrant for the arrest of such a probationer, which may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which shall serve as authorization for the detention of such a probationer in a prison until he—”; 35 40

(b) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

“(b) is again placed under correctional supervision by the Commissioner or the parole board in his or its discretion; or 45
(c) is referred back to the court within 72 hours for trial or for the passing or putting into operation of his postponed or suspended sentence, as the case may be, or to obtain a warrant from [the] any court for his further detention until the court has decided on his case.”; and 50

(c) by the substitution in subsection (3) for the words following upon paragraph (b) of the following words:

“and who has been arrested and is being detained under the provisions of subsection (1), may in such a case be detained in accordance with his 55

original sentence or imprisonment by the Commissioner or the parole board in his or its discretion in any prison without referral to the court which imposed such sentence or converted such imprisonment.”.

Substitution of section 84D of Act 8 of 1959, as inserted by section 28 of Act 122 of 1991

5

14. The following section is hereby substituted for section 84D of the principal Act:

“Applicability of certain laws

84D. The provisions of sections 31, 32, 32A and 49 shall *mutatis mutandis* apply to all probationers unless they are inconsistent with the provisions of this Chapter.”.

10

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

15. Section 84E of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“In the application of correctional supervision the Commissioner may, subject to the provisions of subsection (2) and any condition determined by the court or the parole board, integrate any probationer with any appropriate rehabilitation or other programme established by himself, a social welfare authority or any other body to provide for—”.

15

Insertion of section 84F in Act 8 of 1959

20

16. The following section is hereby inserted in the principal Act after section 84E:

“Limitation on correctional supervision

84F. (1) Any person sentenced to imprisonment under section 276(1)(i) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall serve at least one sixth of his sentence before he may be considered for placement under correctional supervision, unless the court has directed otherwise: Provided that if more than one sentence has been imposed under section 276(1)(i) of the Criminal Procedure Act, 1977, the person shall not be placed under correctional supervision for a period exceeding five years.

25

(2) If a person has been sentenced to imprisonment under section 276(1)(i) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and to imprisonment for a period not exceeding five years as an alternative to a fine, the person shall serve at least one sixth of the effective sentences before he may be considered for placement under correctional supervision, unless the court has directed otherwise.

30

(3) If a person has been sentenced to imprisonment for a definite period under section 276(1)(b) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), imprisonment under section 276(1)(i) of the said Act and imprisonment for 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 or the non-parole-period, if any, whichever is the longer, before he may be considered for placement under correctional supervision, unless the court has directed otherwise: Provided that a person sentenced to imprisonment for a definite period under section 276(1)(b) of the said Act shall not be placed under correctional supervision unless such sentence has been converted into correctional supervision in accordance with section 276A(3) of the said Act.”.

35

40

45

Substitution of section 92A of Act 8 of 1959, as inserted by section 27 of Act 92 of 1990 and amended by section 24 of Act 68 of 1993

17. The following section is hereby substituted for section 92A of the principal Act:

50

“Day parole

92A. (1) Notwithstanding the provisions of the warrant under which a prisoner is being detained in custody, a prisoner serving a determinate sentence of imprisonment or a sentence of life imprisonment may by written order be placed on day parole on the conditions and for the periods specified therein. 5

(2) The provisions of this Act relating to the placement of a prisoner on parole shall *mutatis mutandis* apply to the placement of a prisoner on day parole.”.

Amendment of section 94 of Act 8 of 1959, as amended by section 37 of Act 80 of 1964, section 24 of Act 75 of 1965, section 17 of Act 101 of 1969, section 8 of Act 92 of 1970, section 17 of Act 62 of 1973, section 6 of Act 43 of 1981, section 20 of Act 104 of 1983, section 46 of Act 97 of 1986, section 28 of Act 92 of 1990, section 31 of Act 122 of 1991, section 26 of Act 68 of 1993, section 15 of Act 135 of 1993 and section 37 of Act 79 of 1996 10 15

18. Section 94 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of item (aa) *bis* of subparagraph (ii) of paragraph (b); and
- (b) by the substitution for paragraph (r) of subsection (1) of the following paragraph: 20
 - “(r) the release or placement under correctional supervision, on parole or on day parole of [persons] prisoners serving sentences of imprisonment;”.

Substitution of certain expression in Act 8 of 1959

19. The principal Act is hereby amended by the substitution for the expression “daily parole”, wherever it occurs, of the expression “day parole”. 25

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, section 18 of Act 139 of 1992 and section 20 of Act 116 of 1993

20. Section 276 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (i) of subsection (1) of the following paragraph: 30

- “(i) imprisonment from which such a person may be placed under correctional supervision in [his] the discretion [by] of the Commissioner or a parole board.”.

Amendment of section 276A of Act 51 of 1977, as inserted by section 42 of Act 122 of 1991 and amended by section 46 of Act 129 of 1993 35

21. Section 276A of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the substitution in subsection (3) for the words following upon subparagraph (ii) of paragraph (a) of the following words: 40
 - “[the Commissioner] and such a person has already been admitted to a prison, the Commissioner or a parole board may, if he or it is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk or registrar of the court, as the case may be, to have that person appear before the court *a quo* in order to reconsider the said sentence.”; 45
- (b) by the substitution in subsection (3) for subparagraph (ii) of paragraph (c) of the following subparagraph:
 - “(ii) inform the Commissioner or the parole board in writing of the date for which the matter has been set down on the roll and request him or it to furnish him with a written motivated recommendation before that date for submission to the judicial officer; and”; 50
- (c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:
 - “(a) A court, whether constituted differently or not, which has imposed a punishment referred to in subsection (1) or (2) on a person or has converted his sentence under subsection (3)(e)(ii), may at any time, 55

if it is found from a motivated recommendation by a probation officer, [or] the Commissioner or the parole board that that person is not fit to be subject to correctional supervision or to serve the imposed punishment, reconsider that punishment and impose any other proper punishment.”.

Insertion of section 276B in Act 51 of 1977

5

22. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 276A:

“Fixing of non-parole-period

276B. (1) (a) If a court sentences a person convicted of an offence to imprisonment for a period of two years or longer, the court may as part of the sentence, fix a period during which the person shall not be placed on parole. 10

(b) Such period shall be referred to as the non-parole-period, and may not exceed two thirds of the term of imprisonment imposed or 25 years, whichever is the shorter. 15

(2) If a person who is convicted of two or more offences is sentenced to imprisonment and the court directs that the sentences of imprisonment shall run concurrently, the court shall, subject to subsection (1)(b), fix the non-parole-period in respect of the effective period of imprisonment.”.

Amendment of section 287 of Act 51 of 1977, as amended by section 43 of Act 122 of 1991 20

23. Section 287 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“Unless the court which has imposed a period of imprisonment as an alternative to a fine has directed otherwise, the Commissioner or a parole board may in his or its discretion at the commencement of the alternative punishment or at any point thereafter, if it does not exceed five years—”. 25

Transitional provision

24. (1) Any person serving a sentence of imprisonment immediately before the commencement of this Act shall be deemed to have been awarded the maximum number of credits in terms of section 22A of the principal Act as it was in force immediately before the commencement of this Act. 30

(2) The Commissioner of Correctional Services or the Minister of Correctional Services, as the case may be, shall as soon as possible after the commencement of this Act, consider the placement on parole of every such person in terms of the principal Act as it was in force immediately before the commencement of this Act. 35

Short title and commencement

25. This Act shall be called the Parole and Correctional Supervision Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the Gazette. 40

MEMORANDUM ON THE OBJECTS OF THE PAROLE AND CORRECTIONAL SUPERVISION AMENDMENT BILL, 1997

1. The main object of the Bill is to make provision that placement under correctional supervision, on parole or on day parole of all prisoners serving a sentence of imprisonment exceeding 12 months will be considered and approved by an independent body after the prisoners have served a compulsory portion of their sentences in a prison.

2. The proposal necessitates the establishment of more than one parole board which will be composed of members of the community and representatives from all the stake holders in the criminal justice system.

3. The amendment of the Correctional Services Act, 1959 (Act No. 8 of 1959), and the Criminal Procedure Act, 1977 (Act No. 51 of 1977), is proposed in order, *inter alia*, to regulate the following matters:

- (a) The composition and functions of parole boards;
- (b) the commencement, termination and calculation of sentences;
- (c) the functions of institutional committees and of the National Advisory Council on Correctional Services;
- (d) the provisions applicable to a prisoner's release or placement under correctional supervision, on parole or on day parole;
- (e) special remission of sentence by the Commissioner of Correctional Services;
- (f) the powers of the Commissioner with regard to placement under correctional supervision, on parole or on day parole; and
- (g) the extension of the power of the courts so as to ensure that a compulsory period of a sentence must be served in detention prior to the consideration of the placement of a prisoner on parole.

4. The Department of Correctional Services and the State Law Advisers are of the view that the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996, should be followed with regard to this Bill.

INSTITUTIONS/PERSONS CONSULTED OR APPROACHED:

- * South African Police Service
- * Department of Justice
- * Department of Welfare
- * Chief Justice, Judges of Appeal and Judges of the High Court
- * Attorneys-General, Regional Court Presidents and Magistrates
- * Members of the Department of Correctional Services
- * Prisoners in detention
- * Portfolio Committee on Correctional Service and Select Committees of the former Senate dealing with Correctional Services and Justice
- * Premiers of the various provinces
- * Various nongovernmental organisations
- * Nicro