

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No 29893 of 18 May 2007)
(The English text is the official text of the Bill)*

(MINISTER OF CORRECTIONAL SERVICES)

[B 32—2007]

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- “**‘care’** refers to the provision of services aimed at fulfilling the basic needs of inmates in order to develop, maintain and enhance the well-being of persons under the authority of the Department;”;
- (e) by the deletion of the definition of “**Commissioner**”;
- (f) by the insertion after the definition of “**Controller**” of the following definitions: 5
- “**‘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 includes every place used as a police cell or lock-up; 10
- ‘correctional medical officer’** means a medical practitioner registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and appointed in terms of section 3(4);”;
- (g) by the substitution in the definition of “**disability**” for the words preceding paragraph (a) of the following words: 15
- “**‘disability’** means a physical or mental condition which prevents [a prisoner] an inmate from operating in an environment developed for persons without such an impairment, and includes—”;
- (h) by the substitution for the definition of “**Head of Prison**” of the following definition: 20
- “**‘Head of [Prison] Correctional Centre’** means a correctional official designated by the National Commissioner to manage and control a particular [prison] correctional centre;”;
- (i) by the substitution for the definition of “**Independant Prison Visitor**” of the following definition: 25
- “**‘[Independant Prison] Independent Correctional Centre Visitor’** means a person appointed under section 92;”;
- (j) by the insertion after the definition of “**Independant Prison Visitor**” of the following definition: 30
- “**‘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;”;
- (k) by the substitution for the definition of “**Inspecting Judge**” of the following definition: 35
- “**‘[Inspecting Judge] Inspector-General for Correctional Services’** means a person appointed under section 86;”;
- (l) by the deletion of the definition of “**joint venture prison**”; 40
- (m) by the deletion of the definition of “**medical officer**”; 45
- (n) by the insertion after the definition of “**mother and child unit**” of the following definition: 50
- “**‘National Commissioner’** means the National Commissioner of Correctional Services contemplated in section 3(3);”;
- (o) by the insertion after the definition of “**National Council**” of the following definition: 55
- “**‘needs-based programmes’** means programmes that are developed or rendered according to the identified specific needs of offenders;”;
- (p) by the insertion after the definition of “**non-parole period**” of the following definition: 60
- “**‘offender’** means a convicted person sentenced to incarceration or correctional supervision;”;
- (q) by the deletion of the definition of “**prison**”; 65
- (r) by the deletion of the definition of “**prisoner**”; 70
- (s) by the deletion of the definition of “**Provincial Commissioner**”; 75
- (t) by the insertion after the definition of “**publication**” of the following definition: 80

to result in his or her death or impairment of his or her health or to be a source of infection to others, may be temporarily detained until his or her release is authorised by the correctional medical officer.

(3) **[A sentenced prisoner]** An offender must be released from [prison] a correctional centre and from any form of community corrections imposed in lieu of part of a sentence of [imprisonment] incarceration when the term of [imprisonment] incarceration imposed has expired.

(4) In accordance with the provisions of this Chapter **[a prisoner]** an offender may be placed under correctional supervision or on day parole or on parole before the expiration of his or her term of [imprisonment] incarceration.”;

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

“(a) An offender may 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 an offender sentenced to life incarceration, on a date to be determined by the Minister, after receipt of a recommendation in this regard from the National Council and after taking into consideration the incarceration framework contemplated in section 73A.”; and

(c) by the substitution for subsections (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 determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A.

(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 for a period of two years and may]** not be placed on parole until he or she has served the period **[at least 12 months]** determined by the Minister in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A;
- (iii) **[imprisonment]** incarceration for the prevention of crime, may **[be detained in a prison 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]** the period determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A;
- (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]** the period determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A;
- (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**

- (f) 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.”; and 5
- (g) by the substitution of the word “**offender**” for the word “**prisoner**” wherever it occurs in that section.

Amendment of section 76 of Act 111 of 1998 10

- 60.** 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 15

- 61.** 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—”. 20

Substitution of section 78 of Act 111 of 1998

- 62.** The following section is hereby substituted for section 78 of the principal Act: 25

“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]** incarceration, **[the court]** the National Council 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. 30

(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. 35

(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]** incarceration, 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. 40

(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.”. 45

Substitution of section 79 of Act 111 of 1998

63. 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 a 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

64. Section 80 of the principal Act is hereby amended by the substitution for subsections (1) and (2), respectively, of the following subsections:

“(1) A Correctional Supervision and Parole Board may, on the recommendation of the National Commissioner, grant to **[a prisoner]** an offender, except to **[a prisoner]** an offender serving a life sentence or a sentence[,], in terms of section 286A of the Criminal Procedure Act, who has acted highly meritoriously, special remission of sentence not exceeding two years either unconditionally or subject to such conditions as the Board may determine.

(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]**, if no such period has been stipulated, the period determined by the Minister, in consultation with the National Council and after taking into consideration the incarceration framework contemplated in section 73A.”.

Amendment of section 81 of Act 111 of 1998

65. Section 81 of the principal Act is hereby amended by the substitution for subsections (2) and (3), respectively, of the following subsections:

“(2) The National Council may recommend the advancement of the approved date for placement of any **[prisoner]** offender or group of **[prisoners]** offenders under community corrections and the Minister may act accordingly.

(3) Community corrections granted in terms of subsection (2) is subject to such conditions as may be imposed by the Correctional Supervision and Parole Board under whose jurisdiction the **[prisoners]** offenders may fall or the National Commissioner in terms of section 75(7).”.

Amendment of section 82 of Act 111 of 1998

66. Section 82 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b), respectively, of the following paragraphs:

“(a) at any time authorise the placement on correctional supervision or parole of any **[sentenced prisoner]** offender, subject to such conditions as may be recommended by the Correctional Supervision and Parole Board under whose jurisdiction such **[prisoner]** offender may fall or, in the case of **[a prisoner]** an offender serving a life sentence, by the **[court]** Minister; and;

(b) remit any part of **[a prisoner’s]** an offender’s sentence.”.

Amendment of section 83 of Act 111 of 1998

67. 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;”;

(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

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68. 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

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

“Establishment of [Judicial Inspectorate] 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 **[independant]** independent office under the control of the **[Inspecting Judge]** Inspector-General for Correctional Services. 15

(2) The object of the **[Judicial Inspectorate]** Office of the Inspector-General for Correctional Services is to facilitate the inspection of **[prisons]** correctional centres in order that the **[Inspecting Judge]** Inspector-General for Correctional Services may report on the treatment of **[prisoners]** offenders in [prisons] correctional centres and on conditions in **[prisons]** correctional centres.”. 20

Substitution of section 86 of Act 111 of 1998

70. The following section is hereby substituted for section 86 of the principal Act: 25

“[Inspecting Judge] Inspector-General for Correctional Services”

86. (1) The President must appoint the **[Inspecting Judge]** Inspector-General for Correctional Services who must be—

(a) a judge of the High Court who is in active service as defined in section 1(1) of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); or 30

(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.

(1A) An Inspector-General for Correctional Services must be appointed for a fixed period. 35

(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 for Correctional Services requests to be released to resume judicial duties. 40

(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 45

(b) subsection (1)(b) receives the salary, allowances, benefits and privileges attached to the office of a judge.”.

Repeal of section 87 of Act 111 of 1998

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

Repeal of section 88 of Act 111 of 1998

72. 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 5

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

“Appointment of staff”

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

(a) a Chief Executive Officer who is seconded by the Director-General to the Office of the Inspector-General for Correctional Services to perform all financial, administrative and clerical functions pertaining to such Office;

(b) such officers in the public service seconded by the Director-General 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

74. 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.”; and

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

Amendment of section 92 of Act 111 of 1998

75. 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 **[Independant Prison]** Independent Correctional Centre Visitor for **[any prison or prisons]** each correctional centre.

(2) An **[Independant Prison]** Independent Correctional Centre 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 **[Inspecting Judge]** Chief Executive Officer may **[at any time, if valid grounds exist,]** suspend or terminate the service of an **[Independant Prison]** Independent Correctional Centre Visitor in terms of any law regulating his or her conditions of employment.”.

Amendment of section 93 of Act 111 of 1998

76. Section 93 of the principal Act is hereby amended—

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

“An **[Independent Prison]** Independent Correctional Centre Visitor shall deal with the complaints of **[prisoners]** offenders by—”;

(b) by the deletion of subsection (8).

Substitution of heading to Chapter XI of Act 111 of 1998

77. 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

78. 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 with 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 correctional centres 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 sections 95A, 95B and 95C in Act 111 of 1998

79. 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 proceedings and to prosecute in disciplinary matters resulting from any investigation contemplated 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 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

80. 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 a service of the Department is designated as an essential service in terms of section 71 of that Act, and an official who provides such service participates 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) of 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 No. 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 and the Public Service Act.”.

Amendment of section 98 of Act 111 of 1998

81. The following section is hereby substituted for section 98 of the principal Act:

“Professionals

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

Amendment of section 99 of Act 111 of 1998

82. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 99 of the principal Act.

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

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83. Section 101 of the principal Act is hereby amended—

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

“(a) maintaining the safe custody of [a prisoner] an inmate, the security of a [prison] correctional centre and controlling access of persons to and permissibility of goods in a [prison] correctional centre; 10

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

“(d) investigating theft, fraud, corruption and maladministration by correctional officials.”; and 15

(c) 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 National 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] correctional centre, or to give effect to subsection (1)(d); and 20 25

(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— 30

(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 104 of Act 111 of 1998

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84. The words “offender or offenders” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 104 of the principal Act.

Amendment of section 106 of Act 111 of 1998

85. The words “offender or offenders” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 106 of the principal Act. 40

Amendment of section 115 of Act 111 of 1998

86. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 115 of the principal Act.

Amendment of section 116 of Act 111 of 1998

87. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 116 of the principal Act. 45

Amendment of section 117 of Act 111 of 1998 as amended by section 39 of Act 32 of 2001

88. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 117 of the principal Act. 50

Amendment of section 118 of Act 111 of 1998

89. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 118 of the principal Act.

Amendment of section 119 of Act 111 of 1998

90. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 119 of the principal Act. 5

Amendment of section 120 of Act 111 of 1998

91. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 120 of the principal Act.

Amendment of section 121 of Act 111 of 1998 10

92. The words “inmate or inmates” are hereby substituted for the words “prisoner or prisoners” wherever they occur in section 121 of the principal Act.

Amendment of section 123 of Act 111 of 1998

93. Section 123 of the principal Act is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection: 15
 - “(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.”; and 20
 - (b) by substituting the word “inmate” for the word “prisoner” wherever it occurs in this section.

Substitution of section 124 of Act 111 of 1998

94. The following section is hereby substituted for section 124 of the principal Act: 25

“Unauthorised wearing of departmental dress or insignia or prescribed offender 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 30
 - (b) the prescribed offender 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.”. 35

Amendment of section 133 of Act 111 of 1998

95. Section 133 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) All State departments must, as far as practicable, purchase articles and supplies manufactured by [prisoner] offender labour from the Department at fair and reasonable prices as may be determined by the Minister of Finance.”. 40

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

96. Section 134 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) of the words **“inmate or inmates”** for the words **“prisoner or prisoners”** wherever they occur in paragraphs (a), (b), (c), (e), (f), (g), (h), (i), (j), (k) and (l);
- (b) by the substitution in subsection (1) for paragraph (m) of the following paragraph:
 - “(m) providing money, food, clothing, a travelling allowance or method of transport for **[prisoners]** offenders prior to their placement for release;”;
- (c) by the substitution in subsection (1) of the word **“inmate”** for the word **“prisoner”** wherever it occurs in paragraphs (n), (o), (oA) and (oB);
- (d) by the substitution in subsection (1) of the word **“offenders”** for the word **“prisoners”** wherever it occurs in paragraph (p);
- (e) by the substitution in subsection (1) of the word **“inmate”** for the word **“prisoner”** wherever it occurs in paragraph (r) and (s);
- (f) by the substitution in subsection (1) of the word **“offender”** for the word **“prisoner”** wherever it occurs in paragraph (t);
- (g) by the substitution in subsection (1) of the word **“offenders”** for the word **“prisoners”** wherever it occurs in paragraphs (bb), (cc) and (ee);
- (h) 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;”;
- (i) by the substitution in subsection (2) of the words **“inmate or inmates”** for the words **“prisoner or prisoners”** wherever they occur in paragraphs (a) and (b);
- (j) by the substitution in subsection (1) of the words **“inmate or inmates”** for the words **“prisoner or prisoners”** wherever they occur in paragraphs (j), (k), (m), (n) and (w);
- (k) by the substitution in subsection (2) of the word **“offender”** for the word **“prisoner”** wherever it occurs in paragraph (x);
- (l) by the substitution in subsection (2) of the word **“inmate”** for the word **“prisoner”** wherever it occurs in paragraph (y);
- (m) 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;”;
- (n) by the deletion in subsection (2) of paragraph (hh).

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

97. Section 136 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) of the word **“offender”** for the word **“prisoner”** wherever it occurs;
- (b) by the substitution in subsection (3) of the word **“offender”** for the word **“prisoner”** wherever it occurs;
- (c) 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

98. 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"	5
"Commissioner"	"National Commissioner"	
"Head of Prison"	"Head of Correctional Centre"	
"imprisonment"	"incarceration"	
"Independant Prison Visitor"	"Independent Correctional Centre Visitor"	10
"Independant 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"	15
"medical officer"	"correctional medical officer"	
"prison"	"correctional centre"	
"prisons"	"correctional centres"	
"Provincial Commissioner"	"Regional Commissioner"	20
sentenced prisoner	offender	
sentenced prisoners	offenders	
unsentenced prisoners	unsentenced offenders	

Short title

97. This Act is called the Correctional Services Amendment Act, 2007. 25

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

1. OBJECTS OF BILL

The Bill seeks to amend the Correctional Services Act, 1988 (Act No. 111 of 1998), in order to align it with the White Paper on Correctional Services by addressing the following principles contained in the White Paper:

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

2. PERSONS/BODIES CONSULTED

- National Council for Correctional Services
- Justice, Crime Prevention and Security Cluster

3. FINANCIAL IMPLICATIONS FOR STATE

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

4. PARLIAMENTARY PROCEDURE

4.1 The State Law Advisers 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.

4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

- “ **‘public-private partnership correctional centre’** means a correctional centre or part of a correctional centre referred to in section 103;”;
- (u) 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;”;
- (v) by the substitution for the definition of “**unsentenced prisoner**” of the following definition:
- “ **‘unsentenced [prisoner] offender’** means any person who is lawfully detained in [prison] a correctional centre and who has been convicted of an offence, but who has not been sentenced to [imprisonment] incarceration;”.

Amendment of section 2 of Act 111 of 1998

2. Section 2 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c), respectively, of the following paragraphs:
- “(b) detaining all [prisoners] inmates in safe custody whilst ensuring their human dignity; and
- (c) promoting the social responsibility and human development of all [prisoners] offenders and persons subject to community corrections.”.

Substitution of heading to chapter III of Act 111 of 1998

3. The following heading is hereby substituted for the heading in chapter III of the principal Act:
- “**CUSTODY OF ALL [PRISONERS] INMATES UNDER CONDITIONS OF HUMAN DIGNITY**”.

Amendment of section 4 of Act 111 of 1998

4. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 4 of the principal Act.

Amendment of section 5 of Act 111 of 1998, as amended by section 4 of Act 32 of 2001

5. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 5 of the principal Act.

Amendment of section 6 of Act 111 of 1998, as amended by section 5 of Act 32 of 2001

6. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 6 of the principal Act.

Amendment of section 7 of Act 111 of 1998, as amended by section 6 of Act 32 of 2001

7. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) [Prisoners] inmates must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) (a) [Sentenced prisoners] Offenders must be kept separate from unsentenced [prisoners] offenders or awaiting trial detainees.
- (b) Male [prisoners] inmates must be kept separate from female [prisoners] inmates.

(c) **[Prisoners]** Inmates who are children must be kept separate from adult **[prisoners]** inmates and in accommodation appropriate to their age.

(d) The Commissioner may detain **[prisoners]** inmates of specific age, health or security risk categories separately.

(e) The Commissioner may accommodate **[prisoners]** inmates in single or communal cells depending on the availability of accommodation. 5

(f) Where there is a danger of **[prisoners]** persons who are awaiting trial or sentence defeating the ends of justice by their association with **[other prisoners]** offenders, the Commissioner must detain them apart.”

Amendment of section 8 of Act 111 of 1998 10

8. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 8 of the principal Act.

Amendment of section 9 of Act 111 of 1998

9. Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) Every **[prisoner]** inmate must keep his or her person, clothing, bedding and cell clean and tidy.”

Amendment of section 10 of Act 111 of 1998

10. Section 10 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) The Department must provide every **[prisoner]** inmate with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.”

Amendments of section 11 of Act 111 of 1998

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

“Exercise 25

11. Every **[prisoner]** inmate must be given the opportunity to exercise sufficiently in order to remain healthy and is entitled to at least one hour of exercise daily. If the weather permits, this exercise must take place in the open air.”

Amendment of section 12 of Act 111 of 1998, as amended by section 8 of Act 32 of 2001 30

12. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 12 of the principal Act.

Amendment of section 13 of Act 111 of 1998

13. Section 13 of the principal Act is hereby amended— 35

(a) 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.”; and 40

(b) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in that section.

Amendment of section 14 of Act 111 of 1998

14. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 14 of the principal Act.

Amendment of section 15 of Act 111 of 1998

15. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 15 of the principal Act. 5

Amendment of section 16 of Act 111 of 1998, as amended by section 9 of Act 32 of 2001

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

(a) by the substitution for the heading of the following heading: 10

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

(b) by the substitution for subsections (1), (2) and (3), respectively, of the following subsections:

“(1) The Department may provide correction, development and [support] care programmes and services even when not required to do so by this Act. 15

(2) In all instances, when the Department does not provide such services, the National Commissioner must inform **[prisoners] inmates** of services available from other sources and put **[prisoners] inmates** who request such services in touch with appropriate agencies. 20

(3) The Department must take measures, in terms of planning, policy and infrastructure, to accommodate **[prisoners] inmates** with disabilities in order to enable such **[prisoners] inmates**, where practicable to fully exercise the rights and to enjoy the amenities to which every **[prisoner] inmate** is entitled.”. 25

Amendment of section 17 of Act 111 of 1998

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

“Access to legal advice

17. (1) Every **[prisoner] inmate** is entitled to consult on any legal matter with a legal practitioner of his or her choice at his or her own expense. 30

(2) The Minister may, by regulation, impose restrictions on the manner in which such consultations are conducted if such restrictions are necessary for the safe custody of **[prisoners] inmates**, but legal confidentiality must be respected. 35

(3) The Head of **[Prison] Correctional Centre** must take reasonable steps to enable **[prisoners] inmates** to exercise the substantive rights referred to in section 6(3).

(4) **[Prisoners facing trial or sentence] Awaiting trial detainees or unsentenced offenders** must be provided with the opportunities and facilities to prepare their defence. 40

Amendment of section 18 of Act 111 of 1998

18. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 18 of the principal Act.

Amendment of section 19 of Act 111 of 1998

19. The words “inmate” or “inmates” are hereby substituted for the words “prisoner” or “prisoners” wherever they occur in section 19 of the principal Act. 45

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

20. Section 20 of the principal Act is hereby amended by the substitution for subsections (1) and (3), respectively, of the following subsections:

“(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. 5

(3) Where practicable, the National Commissioner must ensure that a mother and child unit is available for the accommodation of female **[prisoners]** inmates and the children whom they may be permitted to have with them.”. 10

Amendment of section 21 of Act 111 of 1998, as amended by section 11 of Act 32 of 2001

21. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 21 of the principal Act.

Amendment of section 22 of Act 111 of 1998 15

22. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 22 of the principal Act.

Amendment of section 23 of Act 111 of 1998

23. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 23 of the principal Act. 20

Amendment of section 24 of Act 111 of 1998, as amended by section 12 of Act 32 of 2001

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

(a) by substituting the word “inmate” for the word “prisoner” wherever it appears in this section; 25

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

“(a) A hearing before a Head of **[Prison]** Correctional Centre or the authorised official must be conducted informally and without representation.”; 30

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

(d) 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 35 30 days.”;

(e) 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. 40

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

(f) 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.” 45

Substitution of section 25 of Act 111 of 1998

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

“[Solitary confinement] Detention in 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] inmate concerned, confirm or set aside the decision [or penalty] and substitute an appropriate order for it. 5

(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. 10

(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 must be assessed once a day by a registered nurse or psychologist or a correctional medical officer. 15

(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.”. 20

Amendment of section 26 of Act 111 of 1998, as amended by section 13 of Act 32 of 2001

26. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 26 of the principal Act. 25

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

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

(a) by the substitution in subsection (3) for paragraph (d) of the following paragraph: 30

“(d) searches contemplated in subsections (1) and (2) must be authorised by the Head of [Prison] Correctional Centre but searches in terms of subsection (2)(b), (c), (d) and (e) must be executed or supervised by a registered nurse, a correctional medical officer or a medical practitioner other than a correctional official, depending on the procedure necessary to effect the search.”; and 35

(b) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in this section.

Amendment of section 28 of Act 111 of 1998, as amended by section 15 of Act 32 of 2001 40

28. The word “inmate” is hereby substituted for the word “prisoner” wherever it occurs in section 28 of the principal Act.

Amendment of section 29 of Act 111 of 1998

29. The following section is hereby substituted for section 29 of the principal Act: 45

“**Security classification**

29. Security classification is determined by the extent to which the [prisoner] inmate presents a security risk and so as to determine the [prison] correctional centre or part of a [prison] correctional centre in which he or she is to be detained.”. 50

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

30. Section 30 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (e), the addition of the word “and” at the end of paragraph (f) and the addition to that subsection of the following paragraph: 5
 “(g) to effect programmes as contemplated in section 24(8).”;
- (b) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in that section.

Amendment of section 31 of Act 111 of 1998, as amended by section 17 of Act 32 of 2001 10

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

- (a) by the substitution for subsection (2) of the following subsection: 15
 “(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] 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: 25
 “(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.”;
- (d) by the deletion of subsection (4); and
- (e) by the substitution of the word “inmate” for the word “prisoner” wherever it occurs in that section. 30

Amendment of section 32 of Act 111 of 1998, as amended by section 18 of Act 32 of 2001

32. Section 32 is hereby amended by the substitution for subsections (1) and (5), respectively, of the following subsections:

- “(1) (a) Every correctional official is authorised to use all lawful means to detain in safe custody all [prisoners] inmates and, subject to the restrictions of this Act or any other law, may use force to achieve this objective where no other means are available. 35
- (b) A minimum degree of force must be used and the force must be proportionate to the objective. 40
- (c) A correctional official may not use force against [a prisoner] an inmate except when it is necessary for—
- (i) self-defence;
- (ii) the defence of any other person;
- (iii) preventing [a prisoner] an inmate from escaping; or 45
- (iv) the protection of property.
- (5) If force was used, the [prisoner] inmate concerned must undergo an immediate medical examination and receive the treatment prescribed by the correctional medical officer.”. 50

Amendment of section 33 of Act 111 of 1998, as amended by section 19 of Act 32 of 2001 50

33. Section 33 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraphs (a) and (b), respectively, of the following paragraphs: 55
 “(a) if [a prisoner] an inmate fails to lay down a weapon or some other dangerous instrument in spite of being ordered to do so;

- (b) if the security of the **[prison]** correctional centre or safety of **[prisoners]** inmates or others is threatened by one or more **[prisoners]** inmates; or"; and
- (b) by the substitution for subsection (7) of the following subsection:
 "(7) If **[a prisoner]** an inmate has been affected by tear-gas he or she must receive medical treatment as soon as the situation allows."

Amendment of section 34 of Act 111 of 1998, as amended by section 20 of Act 32 of 2001

- 34.** Section 34 of the principal Act is hereby amended by the substitution in subsection (3) for paragraphs (c) and (d), respectively, of the following paragraphs:
 - "(c) to prevent **[a prisoner]** an inmate from escaping; or
 - (d) when the security of the **[prison]** correctional centre or the safety of **[prisoners]** inmates or other persons is threatened."

Amendment of section 37 of Act 111 of 1998

- 35.** Section 37 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 "In addition to the obligations which apply to all **[prisoners]** inmates every **[sentenced prisoner]** offender must—";
 - (b) by the insertion after subsection (1) of the following subsection:
 - "(1A) In order to furnish offenders 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

- 36.** Section 38 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 "As soon as possible after admission as **[a sentenced prisoner]** an offender, such **[prisoner]** offender must be assessed to determine his or her—";
 - (b) 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 must, in particular—
 - (i) contain proposed intervention aimed at addressing the risks and needs of the offender, as identified during an in-depth risk assessment, to correct the offending behaviour;
 - (ii) spell out what services and programmes are required to target offending behaviour and to help the offender develop skills to handle the socio-economic conditions that led to criminality;
 - (iii) spell out services and programmes needed to enhance the offender's social functioning; and

- (iv) set time frames and specify responsibilities to ensure that the intended services and programmes are offered to the offender."; and
(c) 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 correctional sentence plan referred to in subsections (1) and (1A) and any comments by the sentencing court."

Amendment of section 39 of Act 111 of 1998

- 37.** Section 39 of the principal Act is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

"(a) After the National Commissioner is satisfied that **[a prisoner]** an offender has been released from a **[prison]** correctional centre erroneously, he or she may issue a warrant for the arrest of such **[a prisoner]** an offender to be re-admitted to **[prison]** a correctional centre, to serve the rest of his or her sentence."

Amendment of section 40 of Act 111 of 1998

- 38.** The following section is hereby substituted for section 40 of the principal Act:

"Labour of [sentenced prisoners] offenders"

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

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

(2) **[A sentenced prisoner]** An offender may not work or conduct any business on his or her own account.

(3) (a) **[A sentenced prisoner]** An offender may elect the type of work he or she prefers to perform, if such choice is practicable and in accordance with an appropriate vocational programme.

(b) A child who is **[a prisoner]** an offender may only do work for the purposes of training aimed at obtaining skills for his or her development.

(c) A child who is **[a prisoner]** an offender may not be subjected to work if the work that is to be performed is inappropriate for the age of the child or if the work places the child's educational, physical, mental, moral or social well-being at risk.

(4) (a) Subject to paragraph (b), the amount of the gratuity that **[sentenced prisoners]** offenders receive for their labour, the administration of the gratuity and the **[prisoners']** offenders' conditions of work must be prescribed by regulation.

(b) The amount of the gratuity contemplated in paragraph (a) must be determined by the National Commissioner with the concurrence of the Minister of Finance.

(5) **[A prisoner]** An offender may never be instructed or compelled to work as a form of punishment or disciplinary measure.

(6) Work performed by **[a prisoner]** an offender must be in accordance with the principles contained in section 37(1)(b) and the performance thereof will not constitute an employment relationship with the Department."

Substitution of section 41 of Act 1998

39. The following section is hereby substituted for section 41 of the principal Act:

“Treatment, development and support services

41. (1) The Department must provide or give access to as full a range of programmes and activities including needs-based programmes, as is practicable to meet the educational and training needs of **[sentenced prisoners]** offenders. 5

(2) (a) **[Sentenced prisoners]** Offenders who are illiterate or children may be compelled to take part in the educational programmes offered in terms of subsection (1). 10

(b) Such programmes may be prescribed by regulation.

(3) The Department must provide social and psychological services in order to develop and support **[sentenced prisoners]** offenders by promoting their social functioning and mental health.

(4) The Department must provide as far as practicable other development and support programmes which meet specific needs of **[sentenced prisoners]** offenders. 15

(5) **[Sentenced prisoners]** Offenders have the right to take part in the programmes and use the services offered in terms of subsections (1), (3) and (4). 20

(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 National Commissioner their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community. 25

(7) Programmes must be responsive to special needs of women and they must ensure that women are not disadvantaged.”.

Amendment of section 42 of Act 111 of 1998, as amended by section 27 of Act 32 of 2001

40. The following section is hereby substituted for section 42 of the principal Act: 30

“Case Management Committee

42. (1) At each **[prison]** correctional centre there must be one or more Case Management Committees composed of correctional officials as prescribed by regulation.

(2) The Case Management Committee must— 35

(a) ensure that each **[sentenced prisoner]** offender has been assessed, and that for **[prisoners]** offenders serving more than **[twelve]** 24 months there is a plan specified in section 38(2);

(b) interview, at regular intervals, each **[prisoner]** offender sentenced to more than twelve months, review the plan for such **[prisoners]** offenders and the progress made and, if necessary, amend such plan; 40

(c) make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of **[a prisoner]** an offender under community corrections;

(d) submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding— 45

(i) the offence or offences for which the **[sentenced prisoner]** offender is serving a term of **[imprisonment]** incarceration together with the judgment on the merits and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department; 50

(ii) the previous criminal record of such **[prisoner]** offender;

(iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such **[prisoner]** offender; 55

- (iv) the likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;
 - (v) **[a prisoner]** an offender who has been declared an habitual criminal which indicates that—
 - (aa) there is a reasonable probability that the **[prisoner]** offender will in future abstain from crime and lead a useful and industrious life; or
 - (bb) the **[prisoner]** offender is no longer capable of engaging in crime; or
 - (cc) for any other reason, it is desirable to place the **[prisoner]** offender on parole;
 - (vi) the possible re-placement of such prisoner under correctional supervision in terms of a sentence provided for in section 276(1)(i) or 287(4)(a) of the Criminal Procedure Act, or in terms of the conversion of such **[prisoner's]** offender's sentence into correctional supervision under section 276A(3)(e)(ii), 286B(4)(b)(ii) or 287(4)(b) of the said Act, and the conditions for such placement;
 - (vii) the possible placement of such **[prisoner]** offender on day parole or on parole, and the conditions for such placement; and
 - (viii) such other matters as the Correctional Supervision and Parole Board may request; and
 - (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]** offender sentenced to **[12 months' imprisonment]** incarceration of 24 months or less.
- (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 43 of Act 111 of 1998

41. Section 43 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3), respectively, of the following subsection:
- “(1) **[A sentenced prisoner]** An offender must be housed at the **[prison]** correctional centre closest to the place where he or she is to reside after release, with due regard to the availability of accommodation and facilities to meet his or her security requirements and with reference to the availability of programmes.
- (2) The transfer of **[a prisoner]** an offender is subject to the same consideration.
- (3) **[A prisoner]** An offender must be examined by the registered nurse or correctional medical officer before his or her transfer. Where such **[a prisoner]** an offender is being treated by a correctional medical practitioner, he or she must not be transferred until the **[prisoner]** offender has been discharged from the treatment or the transfer has been approved by the correctional medical officer after consultation with the Head of **[Prison]** Correctional Centre.”.

Amendment of section 44 of Act 111 of 1998

42. Section 44 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “The National Commissioner may grant permission in writing on such conditions and for such periods as he or she may specify, for **[a sentenced prisoner]** an offender to leave **[prison]** the correctional centre temporarily for the purpose of—”;
- (b) by the substitution of the word “offender” for the word “prisoner” wherever it occurs in that section.

Amendment of section 45 of Act 111 of 1998

43. The following section is hereby substituted for section 45 of the principal Act:

“Placement and release

45. (1) **[A sentenced prisoner]** An offender must be prepared for placement, release and reintegration into society by participating in a pre-release programme. 5

(2) Where **[a prisoner]** an offender is to be placed under correctional supervision or to be released on parole there must be compliance with section 55(3).

(3) At release, **[sentenced prisoners]** offenders must be provided with material and financial support as prescribed by regulation. 10

(4) If the correctional medical officer considers it necessary to establish the health status of **[a prisoner]** an offender at his or her release, the **[prisoner]** offender must undergo a health status examination which may include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act No. 63 of 1977).”. 15

Amendment of section 47 of Act 111 of 1998

44. The following section is hereby substituted for section 47 of the principal Act:

“Clothing

47. No unsentenced **[prisoner]** offender or awaiting trial detainee may be compelled to wear **[prison]** correctional centre clothes, unless **[the prisoner’s]** such unsentenced offender’s or awaiting trial detainee’s own clothing is improper or insanitary or needs to be preserved in the interests of the administration of justice and the **[prisoner]** unsentenced offender or awaiting trial detainee is unable to obtain other suitable clothing from another source.”. 20 25

Amendment of section 50 of Act 111 of 1998

45. 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— 30

(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; 35

(iii) to enable persons subject to community corrections to be rehabilitated in a manner that best keeps 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. 40

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

Amendment of section 51 of Act 111 of 1998

46. Section 51 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 45

“(b) while out of **[prison]** the correctional centre, **[prisoners]** offenders who have been granted temporary leave in terms of section 44;”.

Amendment of section 52 of Act 111 of 1998

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

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

“When community corrections are ordered, **[a court]** the Minister, the Correctional Supervision and Parole Board, the National Commissioner or other body which has the statutory authority to do so, may, subject to the limitations contemplated in subsection (2) and the qualifications of this Chapter, stipulate that the person concerned—”;
- (b) 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 a criminal offence;”;
- (c) 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;”;
- (d) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) where possible takes up and remains in employment;”;
- (e) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) takes part in treatment, correction, development and **[support]** care programmes;”;
- (f) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

“(k) refrains from **[using or]** abusing alcohol or using illegal drugs”;

and
- (g) 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 54 of Act 111 of 1998

48. The word “**offender**” is hereby substituted for the word “**prisoner**” wherever it occurs in section 54 of the principal Act.

Amendment of section 55 of Act 111 of 1998

49. Section 55 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

- “(a) must allow his or her identity and other particulars to be established in the manner and to the same extent as required in section 28 in respect of **[a prisoner]** an offender; and”.

Amendment of section 57 of Act 111 of 1998

50. 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

51. 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

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

“[Use or abuse] Abuse of alcohol or use of illegal 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.”. 5

Amendment of section 68 of Act 111 of 1998

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53. 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

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54. 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 falls 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.”; and;

(c) by the substitution for subsection (4) of the following subsection: 30

“(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

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55. 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 National 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

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56. Section 73 of the principal Act is hereby amended—

(a) by the substitution for subsections (1), (2), (3) and (4), respectively, of the following subsections:

“(1) Subject to the provisions of this Act— 45

(a) **[a sentenced prisoner]** an offender remains in **[prison]** a correctional centre for the full period of sentence; and

(b) **[a prisoner]** an offender sentenced to life **[imprisonment]** incarceration remains in **[prison]** a correctional centre for the rest of his or her life. 50

(2) Any sick **[prisoner]** offender whose sentence has expired but whose release is certified by the correctional medical officer to be likely