

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CRIMINAL MATTERS
AMENDMENT BILL**

[B 93—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 93A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP
OP STRAFREGTELIKE
AANGELEENTHEDE**

[W 93—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 93A—97]

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AMENDMENTS AGREED TO

CRIMINAL MATTERS AMENDMENT BILL
[B 93—97]

CLAUSE 1

1. On page 2, in line 8, after “thereof” to insert:

or the medical practitioner in charge of the patient
2. On page 2, from line 9, to omit all the words after “shall” up to and including “institution,” in line 11 and to substitute:

[, except in the case of a patient detained in an institution under the control of the State and who is not in the medical care of the superintendent of such institution,]

CLAUSE 2

1. On page 2, from line 21, to omit subsection (1) and to substitute:

“(1) (a) Where any person is, with reference to a charge of murder or culpable homicide or rape or a charge involving serious violence, or if the court considers it to be necessary in the public interest, detained as a State patient in terms of this Act or section 77(6)(a)(i) or 78(6)(b)(i) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), a judge in chambers may at any time after the order of detention, on written application being made to him or her—

 - (i) call for such further information as he or she may consider necessary and may summon any psychiatrist to his or her assistance;
 - (ii) if he or she is of the opinion that it is desirable to do so, appoint of his or her own accord or at the request of any interested person, on good cause shown, a *curator ad litem* for the State patient;
 - (iii) order that the State patient—
 - (aa) be discharged either absolutely or conditionally;
 - (bb) cease to be treated as such;
 - (cc) be further detained as a State patient; or
 - (dd) be further detained as a patient under Chapter 3;
 - (iv) make such other order under section 19 as he or she may think fit; or
 - (v) reject the application if a similar application had been rejected by a judge in chambers less than 12 months before the date of the aforementioned application, without making an order in terms of subparagraphs (iii) or (iv) of this paragraph or make any order he or she thinks fit.

(b) An application referred to in paragraph (a) may be made by—

 - (i) the official *curator ad litem*;
 - (ii) the superintendent of the institution, the person in charge of the place where the State patient is being detained or the medical practitioner in charge of the patient;
 - (iii) the State patient;

- (iv) a relative of the State patient; or
- (v) any other person or body on behalf of the State patient.
- (c) (i) Such—
 - (aa) application referred to in paragraph (a);
 - (bb) recommendation referred to in subparagraph (ii) of paragraph (d); or
 - (cc) reports referred to in paragraphs (d) and (f), shall be furnished to the registrar of the court in whose area of jurisdiction the place is situated in which the patient is being detained.
- (ii) Such registrar shall forthwith submit—
 - (aa) such applications, reports and recommendations to a judge in chambers; and
 - (bb) a copy of the application to the official *curator ad litem* if the application is made by someone other than the official *curator ad litem*.
- (d) The official *curator ad litem* shall upon receipt of an application from the registrar as soon as practicable—
 - (i) obtain reports on the State patient concerned by—
 - (aa) the superintendent of the institution, the person in charge of the place where the State patient is being detained or the medical practitioner in charge of the patient; and
 - (bb) two medical practitioners, and either the said superintendent or one of the said two medical practitioners shall be a psychiatrist, provided that he or she may obtain a report by a registered clinical psychologist in addition to the aforementioned reports;
 - (ii) compile his or her own report and recommendation regarding the application, provided that if it appears to the official *curator ad litem* upon the receipt of such application that a similar application in respect of the State patient concerned had been rejected by a judge in chambers less than 12 months before the date of the aforementioned application, he or she may, instead of obtaining the reports referred to in subparagraph (i) of paragraph (a), make a recommendation that the application be rejected; and
 - (iii) furnish such reports and recommendation to the registrar for submission to a judge in chambers.
- (e) The reports referred to in subparagraph (i) of paragraph (d) and subparagraph (i) of paragraph (f) shall contain a detailed history of the State patient and information as to, and a prognosis of, his or her mental condition.
- (f) The *curator ad litem* appointed under subparagraph (ii) of paragraph (a), shall—
 - (i) obtain a report as contemplated in paragraph (e) by a psychiatrist, but may also obtain a report by a registered clinical psychologist in addition to the report by the psychiatrist;
 - (ii) adduce any available evidence relevant to the application; and
 - (iii) perform such other duties as the judge in chambers instructs.
- (g) A *curator ad litem* appointed under subparagraph (ii) of paragraph (a) shall be entitled to the remuneration that the Minister of Justice determines by notice in the *Gazette*.”.

CLAUSE 3

1. On page 6, in line 8, after “of” to insert “section 3B of”.

2. On page 6, in line 12, after “jurisdiction” to insert “in terms of section 75”.
3. On page 6, in line 16, after “(1)” to insert:
, and unless it can be proved on a balance of probabilities that, on the limited evidence available the accused committed the act in question,
4. On page 6, in line 20, after “homicide” to insert “or rape”.
5. On page 6, in line 22, after “interest,” to insert:
where the court finds that the accused has committed the act in question, or any other offence involving serious violence,
6. On page 6, in line 23, to omit “signification of the” and to substitute [signification of the]”.
7. On page 6, in line 24, after “chambers” to insert:
in terms of section 29(1)(a) of the Mental Health Act, 1973 (Act No. 18 of 1973)
8. On page 6, in line 25, to omit “in any case other than a case contemplated in subparagraph (i)” and to substitute:
where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence
9. On page 6, in line 31, after “Act” to insert:
or an order that he or she shall no longer be treated as an outpatient

NEW CLAUSE

1. That the following be a new Clause to follow Clause 3:

Amendment of section 17 of Act 18 of 1973, as amended by section 2 of Act 10 of 1978 and section 7 of Act 51 of 1991

4. Section 17 of the Mental Health Act, 1973, is hereby amended by the substitution for the expression “an attorney-general” of the expression “a Director of Public Prosecutions appointed in terms of section 13(1) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998)”.

CLAUSE 4

1. On page 6, after line 51, to insert:
 - (a) by the substitution for subsection (1) of the following subsection:
 “(1) A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or mental defect which makes him or her incapable—
 - (a) of appreciating the wrongfulness of his or her act or omission; or
 - (b) of acting in accordance with an appreciation of the wrongfulness of his or her act or omission, shall not be criminally responsible for such act or omission.”;

2. On page 6, in line 52, to omit the second “subsection” and to substitute “subsections”.
3. On page 6, after line 52, to insert:

(1A) Every person is presumed not to suffer from a mental illness or mental defect so as not to be criminally responsible in terms of section 78(1), until the contrary is proved on a balance of probabilities.
4. On page 6, in line 53, to omit “(1A)” and to substitute “(1B)”.
5. On page 6, in line 54, after “act” to insert “or an omission”.
6. On page 8, in line 6, after “shall” to insert:

in the case of an allegation or appearance of mental illness or mental defect, and may, in any other case,
7. On page 8, from line 18, to omit subparagraphs (i) and (ii) and to substitute:

“(i) in a case where the accused is charged with murder or culpable homicide or rape or another charge involving serious violence, or if the court considers it to be necessary in the public interest that the accused be—

 - (aa) detained in a psychiatric hospital or a prison pending the decision of a judge in chambers in terms of section 29(1)(a) of the Mental Health Act, 1973 (Act No. 18 of 1973);
 - (bb) admitted to, detained and treated in an institution stated in the order in terms of Chapter 3 of the Mental Health Act, 1973 (Act No. 18 of 1973), pending discharge by a hospital board in terms of section 29(4A)(a) of that Act;
 - (cc) treated as an outpatient in terms of section 7 of that Act pending the certification by the superintendent of that institution stating that he or she need no longer be treated as such;
 - (dd) released subject to such conditions as the court considers appropriate; or
 - (ee) released unconditionally;

(ii) in any other case than a case contemplated in subparagraph (i), that the accused—

 - (aa) be admitted to, detained and treated in an institution stated in the order in terms of Chapter 3 of the Mental Health Act, 1973 (Act No. 18 of 1973), pending discharge by a hospital board in terms of section 29(4A)(a) of that Act;
 - (bb) be treated as an outpatient in terms of section 7 of that Act pending the certification by the superintendent of that institution stating that he or she need no longer be treated as such;
 - (cc) be released subject to such conditions as the court considers appropriate; or
 - (dd) be released unconditionally.”.

CLAUSE 5

1. On page 8, from line 36, to omit subsection (1) and to substitute:

“(1) Where a court issues a direction **[in terms of]** under section 77(1) or 78(2), the relevant enquiry shall be conducted and be reported on—

- (a) where the accused is charged with an offence **[for which the sentence of death may not be imposed referred to in Part II or Part III of Schedule 2]** other than one referred to in paragraph (b), by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court; or
- (b) where the accused is charged with **[an offence for which the sentence of death may be imposed referred to in Part II or Part III of Schedule 2]** murder or culpable homicide or rape or another charge involving serious violence, or if the court considers it to be necessary in the public interest, or where the court in any particular case so directs—
 - (i) by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court;
 - (ii) by a psychiatrist appointed by the court and who is not in the full-time service of the State; **[and]**
 - (iii) by a psychiatrist appointed **[by]** for the accused **[if he so wishes]** by the court; and
 - (iv) by a clinical psychologist where the court so directs.”;

2. On page 10, after line 21, to insert:

- (c) by the addition of the following paragraph to subsection (2):
- “(c) The court may make the following orders after the enquiry referred to in subsection (1) has been conducted—
- (i) postpone the case for such periods referred to in paragraph (a), as the court may from time to time determine;
 - (ii) refer the accused at the request of the prosecutor to the court referred to in section 77(6) which has jurisdiction to try the case;
 - (iii) make any other order it deems fit regarding the custody of the accused; or
 - (iv) any other order.”; and

NEW CLAUSE

1. That the following be a new Clause:

Savings

7. (1) Pending the commencement of the Legal Aid Guide as contemplated in section 3A of the Legal Aid Act, 1969 (Act No. 22 of 1969), and to the extent that the Legal Aid Guide, existing at the commencement of this Act, does not regulate the position of the granting of legal aid or legal representation in respect of the proceedings referred to in section 3(a) of this Act, the Legal Aid Board shall be competent to draft directives, in consultation with the Minister, in terms of which legal aid or legal representation is rendered or made available for purposes of section 3(a) of this Act.

(2) (a) The directives referred to in subsection (1) must be published in the *Gazette*.

(b) Before the directives are published in the *Gazette*, they must be submitted to Parliament and tabled as soon as possible.