

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES BILL

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

(MINISTER OF CORRECTIONAL SERVICES)

[B 65B—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP KORREKTIEWE DIENSTE

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

(MINISTER VAN KORREKTIEWE DIENSTE)

[W 65B—98]

ISBN 0 621 28529 3

BILL

To provide for a correctional system; the establishment, functions and control of the Department of Correctional Services; the custody of all prisoners under conditions of human dignity; the rights and obligations of sentenced prisoners; the rights and obligations of unsentenced prisoners; a system of community corrections; release from prison and placement under correctional supervision, on day parole and parole; a National Council for Correctional Services; a Judicial Inspectorate; Independent Prison Visitors; an internal service evaluation; officials of the Department; joint venture prisons; penalties for offences; the repeal and amendment of certain laws; and matters connected therewith.

PREAMBLE

With the object of changing the law governing the correctional system and giving effect to the Bill of Rights in the Constitution, 1996, and in particular its provisions with regard to prisoners;

Recognising—
international principles on correctional matters;

Regulating—
the release of prisoners and the system of community corrections;
in general, the activities of the Department of Correctional Services; and

Providing—
for independent mechanisms to investigate and scrutinise the activities of the Department of Correctional Services,

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

TABLE OF CONTENTS

CHAPTER I

DEFINITIONS 5

1. Definitions

CHAPTER II

INTRODUCTION

2. Purpose of correctional system
3. Establishment, functions and control of Department 10

CHAPTER III

CUSTODY OF ALL PRISONERS UNDER CONDITIONS OF HUMAN DIGNITY

Part A

General requirements 5

- | | | |
|-----|----------------------------------|----|
| 4. | Approach to safe custody | |
| 5. | Establishment of prisons | |
| 6. | Admission | |
| 7. | Accommodation | |
| 8. | Nutrition | 10 |
| 9. | Hygiene | |
| 10. | Clothing and bedding | |
| 11. | Exercise | |
| 12. | Health care | |
| 13. | Contact with community | 15 |
| 14. | Religion, belief and opinion | |
| 15. | Death in prison | |
| 16. | Development and support services | |
| 17. | Access to legal advice | |
| 18. | Reading material | 20 |
| 19. | Children | |
| 20. | Mothers of young children | |
| 21. | Complaints and requests | |

PART B

Discipline 25

- | | | |
|-----|----------------------------|--|
| 22. | General | |
| 23. | Disciplinary infringements | |
| 24. | Procedures and penalties | |
| 25. | Solitary confinement | |

Part C 30

Security

- | | | |
|-----|-----------------------------------|----|
| 26. | Safe custody | |
| 27. | Searches | |
| 28. | Identification | |
| 29. | Security classification | 35 |
| 30. | Segregation | |
| 31. | Mechanical restraints | |
| 32. | Use of force | |
| 33. | Non-lethal incapacitating devices | |
| 34. | Firearms | 40 |
| 35. | Other weapons | |

CHAPTER IV

SENTENCED PRISONERS

- | | | |
|-----|---------------------------------------------------------|----|
| 36. | Objective of implementation of sentence of imprisonment | |
| 37. | General principles | 45 |
| 38. | Assessment | |
| 39. | Commencement, computation and termination of sentences | |
| 40. | Labour of sentenced prisoners | |
| 41. | Treatment, development and support services | |
| 42. | Case Management Committee | 50 |

- 43. Location and transfer of prisoners
- 44. Temporary leave
- 45. Placement and release

CHAPTER V

UNSENTENCED PRISONERS 5

- 46. General principles
- 47. Clothing
- 48. Food and drink
- 49. Visitors and communication

CHAPTER VI 10

COMMUNITY CORRECTIONS

- 50. Objectives of community corrections
- 51. Persons subject to community corrections
- 52. Conditions relating to community corrections
- 53. Serving of community corrections 15
- 54. Day parole
- 55. Commencement
- 56. Medical examination
- 57. Supervision
- 58. Supervision Committee 20
- 59. House detention
- 60. Community service
- 61. Seeking employment
- 62. Employment
- 63. Compensation 25
- 64. Programmes
- 65. Contribution to costs
- 66. Fixed address
- 67. Use or abuse of alcohol or drugs
- 68. Monitoring 30
- 69. Additional conditions for children
- 70. Non-compliance
- 71. Change of conditions
- 72. Complaints and requests

CHAPTER VII 35

RELEASE FROM PRISON AND PLACEMENT UNDER CORRECTIONAL SUPERVISION AND ON DAY PAROLE AND PAROLE

- 73. Length and form of sentences
- 74. Correctional Supervision and Parole Boards
- 75. Powers, functions and duties of Correctional Supervision and Parole Boards 40
- 76. Correctional Supervision and Parole Review Board
- 77. Powers of Correctional Supervision and Parole Review Board in respect of cases decided by Correctional Supervision and Parole Board
- 78. Powers of court in respect of prisoners serving life sentences
- 79. Correctional supervision or parole on medical grounds 45
- 80. Special remission of sentence for highly meritorious service
- 81. Special measures for reduction of prison population
- 82. Powers of President

CHAPTER VIII**NATIONAL COUNCIL FOR CORRECTIONAL SERVICES**

- 83. Structure of National Council
- 84. Functions and duties of National Council

CHAPTER IX

5

THE JUDICIAL INSPECTORATE

- 85. Establishment of Judicial Inspectorate
- 86. Inspecting Judge
- 87. Appointment of Assistants
- 88. Conditions of service of retired judges 10
- 89. Inspectors and staff
- 90. Powers, functions and duties of Inspecting Judge
- 91. Expenses of Judicial Inspectorate

CHAPTER X**INDEPENDENT PRISON VISITORS**

15

- 92. Appointment of Independent Prison Visitors
- 93. Powers, functions and duties of Independent Prison Visitor
- 94. Visitors' Committee

CHAPTER XI**INTERNAL SERVICE EVALUATION**

20

- 95. Objectives and functions of internal service evaluation

CHAPTER XII**OFFICIALS OF THE DEPARTMENT**

- 96. Powers, functions and duties of correctional officials
- 97. Delegation of powers 25
- 98. Professionals

CHAPTER XIII**GENERAL POWERS OF ENFORCEMENT**

- 99. Access to prisons
- 100. Arrest 30
- 101. Entry, search and seizure
- 102. Use of force

CHAPTER XIV**JOINT VENTURE PRISONS**

- 103. Contracts for joint venture prisons 35
- 104. Duties and restrictions applying to Contractors
- 105. Appointment of Controller
- 106. Powers, functions and duties of Controller
- 107. Appointment of Director
- 108. Powers, functions and duties of Director 40
- 109. Appointment of custody officials
- 110. Powers and duties of custody officials

111. Preservation of confidentiality
 112. Commissioner's powers in an emergency at joint venture prisons

CHAPTER XV

OFFENCES

113. Interference with correctional or custody officials 5
 114. Interference with community corrections conditions
 115. Aiding escape
 116. Unauthorised removal of prisoner from prison
 117. Escaping and absconding
 118. Giving or receiving money or other consideration 10
 119. Supplying certain articles to prisoners
 120. Prisoners receiving or sending articles
 121. Selling or supplying articles to prisoners
 122. Unauthorised entry at prisons and communication or interference with prisoners 15
 123. Prohibited publication
 124. Unauthorised wearing of departmental dress or insignia
 125. Masquerading as an official
 126. False representations
 127. Unauthorised disclosure of information 20
 128. Unauthorised access to or modification of computer material
 129. Indirect complicity

CHAPTER XVI

GENERAL

130. Limitation on legal proceedings 25
 131. Liability for patrimonial loss arising from performance of service by persons under community corrections
 132. Establishment, management and exemption from certain monies of facilities at prisons
 133. Regulations 30
 134. State bound by Act
 135. Repeal of laws
 136. Short title and commencement

SCHEDULE

CHAPTER I

35

DEFINITIONS

Definitions

1. Definitions:

- “amenities” means—
 (a) recreational and other activities, diversions or privileges prescribed by regulation; and 40
 (b) with reference to their restriction as a penalty for disciplinary infringements, only those rights granted beyond the mandatory minimum stipulated in this Act;
 “Area Manager” means a correctional official, appointed by the Commissioner, in charge of all correctional officials who are on the establishment of a management area or office or who have been attached thereto for duty; 45
 “Assistants” means persons appointed under section 88 to assist the Inspecting Judge;
 “Case Management Committee” means a committee established under section 50
 42;
 “child” means a person under the age of 18 years;

“Commissioner” means the Commissioner of Correctional Services, appointed under section 3(3);

“community corrections” means all non-custodial measures and forms of supervision applicable to persons who are subject to such measures and supervision in the community and who are under the control of the Department; 5

“community corrections office” means a place designated by the Commissioner for the administration and management of community corrections;

“community service” means compulsory work for a community organisation or other compulsory work of value to the community, performed without payment;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); 10

“contract”, in relation to a joint venture prison, means a contract for the design, construction, financing or operation of that prison envisaged in section 104;

“Contractor”, in relation to a joint venture prison, means any party who has contracted with the State for the design, construction, financing or operating of a prison; 15

“Controller” means a senior correctional official in the employ of the Department and employed under section 106;

“correctional official” means an employee of the Department appointed under section 3(4); 20

“correctional supervision” means a form of community corrections contemplated in Chapter VI;

“Correctional Supervision and Parole Board” means a board appointed by the Minister under section 75;

“Correctional Supervision and Parole Review Board” means a board selected under section 77; 25

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“custody official” means an employee of a Contractor who is certified to carry out custodial duties at a joint venture prison, and may include an employee of a subcontractor who is so certified; 30

“day parole” means a form of community corrections contemplated in section 55;

“Department” means the Department of Correctional Services;

“Director” means an employee of the Contractor appointed in terms of section 109; 35

“disciplinary official” means a correctional official of the rank of assistant director or above, appointed by the Commissioner in terms of section 24;

“habitual criminal” means a person referred to in section 286 of the Criminal Procedure Act;

“Head of Community Corrections” means a correctional official designated by the Commissioner to manage and control community corrections at a community corrections office; 40

“Head of Prison” means a correctional official designated by the Commissioner to manage and control a particular prison;

“house detention” means a requirement relating to community corrections contemplated in section 60; 45

“Independent Prison Visitor” means a person appointed under section 93;

“Inspecting Judge” means a person appointed under section 87;

“joint venture prison” means a prison or part of a prison referred to in section 104;

“Judicial Inspectorate” means the inspectorate established under section 86; 50

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“legal practitioner” means any person admitted to practice as an advocate or an attorney in the Republic;

“management area” means an area determined by a Provincial Commissioner, which consists of one or more prisons or offices and which is under the control of a correctional official designated as an Area Manager; 55

“medical officer” means a medical practitioner appointed as a correctional official under section 3(4) or, if no medical officer has been appointed or if the post of the medical officer is temporarily vacant, the duties ascribed to the medical officer by this Act must be executed by the district medical officer for the district in which the prison is situated or by such other medical practitioner appointed by the head of the relevant health authority; 60

- “medical practitioner” means a medical practitioner as defined in section 1 of the Health Professions Act, 1974 (Act No. 56 of 1974);
- “medical treatment” means treatment, regimen or intervention prescribed by a medical practitioner, dentist or psychologist as defined in section 1 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974); 5
- “Minister” means the Minister of Correctional Services;
- “mother and child unit” means a unit within a prison where provision is made for separate sleeping accommodation for mother and child, as well as a crèche facility, and where the focus is on the normalisation of the environment in order to promote the child’s physical and emotional development and care; 10
- “National Council” means the National Council for Correctional Services, established under section 84;
- “non-parole period” means the period as defined in section 276B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 15
- “parole” means a form of community corrections contemplated in Chapter VI;
- “periodical imprisonment” means a sentence imposed in terms of section 285 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- “prison” 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 detention in 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 imprisonment, detention, protection, labour, treatment or otherwise, and all quarters of correctional officials used in connection with any such prison, and for the purposes of sections 116 and 118 of this Act includes every place used as a police cell or lock-up; 20
- “prisoner” means any person, whether convicted or not, who is detained in custody in any prison or who is being transferred in custody or is en route from one prison to another prison; 30
- “professionals” means persons registered under the Nursing Act, 1978 (Act No. 50 of 1978), Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), Pharmacy Act, 1974 (Act No. 53 of 1974), Health Professions Act, 1974 (Act No. 56 of 1974), and the Social Work Act, 1978 (Act No. 110 of 1978); 35
- “Provincial Commissioner” means a correctional official designated by the Commissioner to manage and control the activities of the Department in a province as defined in the Constitution;
- “psychologist” means a psychologist as defined in section 1 of the Health Professions Act, 1974 (Act No. 56 of 1974); 40
- “publication” means—
- (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
 - (b) any writing or typescript which has been duplicated in any manner;
 - (c) any drawing, picture, illustration or painting; 45
 - (d) any print, photograph, engraving or lithograph;
 - (e) any record, magnetic tape, soundtrack or any other object in or on which sound has been recorded for reproduction;
 - (f) computer software;
 - (g) the cover or packaging of a film; and 50
 - (h) any figure, carving, statue or model.

- “Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);
- “register” means any physical, written or typed record or any data contained in the random access memory of a computer or stored by any computer on any storage medium; 5
- “registered nurse” means a person registered as a nurse under section 16 of the Nursing Act, 1978 (Act No. 50 of 1978), and excludes any reference to the “nursing auxiliary” and “enrolled nurse”, enrolled under the provisions of the said section;
- “senior correctional official” means a correctional official on or above the post level of correctional official; 10
- “sentenced prisoner” means any person who has been sentenced to imprisonment;
- “solitary confinement” means being held in a single cell with loss of all amenities;
- “Supervision Committee” means a committee established under section 59;
- “Temporary Manager” means a senior correctional official in the employ of the Department appointed for the purposes referred to in section 113; 15
- “unsentenced prisoner” means any person who is lawfully detained in prison, but who has not been sentenced to imprisonment;
- “Visitors’ Committee” means a committee appointed under section 95.

CHAPTER II 20

INTRODUCTION

Purpose of correctional system

2. The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by—
- (a) enforcing sentences of the courts in the manner prescribed by this Act; 25
 - (b) detaining all prisoners in safe custody whilst ensuring their human dignity; and
 - (c) promoting the social responsibility and human development of all prisoners and persons subject to community corrections.

Establishment, functions and control of Department 30

3. (1) The Department of Correctional Services, established by section 7(2) of the Public Service Act, is part of the Public Service, established by section 197 of the Constitution.
- (2) The Department must—
- (a) fulfil the purpose of the correctional system in terms of this Act; 35
 - (b) as far as practicable, be self-sufficient and operate according to business principles; and
 - (c) perform all work necessary for its effective management.
- (3) The Commissioner of Correctional Services is appointed in terms of the Public Service Act, but the conditions of service of the Commissioner are governed by this Act and he or she is also entitled to the privileges of a head of a department which are conferred upon him or her by the Public Service Act. 40
- (4) The Department consists of the Commissioner, other correctional officials appointed by the Commissioner in terms of this Act and other employees appointed in terms of the Public Service Act. 45
- (5) The Department is under the control of the Commissioner, who must, without derogating from the generality of subsection (2)—
- (a) determine the fixed establishment of the Department and the number and grading of posts;
 - (b) determine the distribution of the numerical strength of the Department; 50
 - (c) organise or reorganise the Department at a national or provincial level into various components, units or groups;
 - (d) establish and maintain training institutions or centres for the training of students or correctional officials;

- (e) award to any person who is or was a correctional official such monetary or other reward for exceptional ability or possessing special qualifications or rendering meritorious service, as is, in his or her opinion, a fitting reward;
 - (f) award a monetary or other reward to any person who performs an act which promotes the interests of the Department; and 5
 - (g) appoint, promote, transfer or dismiss correctional officials in accordance with the provisions of this Act and the Labour Relations Act.
- (6) The Commissioner and correctional officials must perform the functions of the Department as prescribed in this Act, subject to such policy as the Minister may determine. 10

CHAPTER III

CUSTODY OF ALL PRISONERS UNDER CONDITIONS OF HUMAN DIGNITY

Part A

General requirements 15

Approach to safe custody

4. (1) Every prisoner is required to accept the authority and to obey the lawful instructions of the Commissioner and correctional officials of the Department and custody officials.
- (2) (a) The Department must take such steps as are necessary to ensure the safe custody of every prisoner and to maintain security and good order in every prison. 20
- (b) The duties and restrictions imposed on prisoners to ensure safe custody by maintaining security and good order must be applied in such a manner that conforms with their purpose and do not affect the prisoner to a greater degree or for a longer period than necessary. 25
- (c) The minimum rights of prisoners entrenched in this Act must not be violated or restricted for disciplinary or any other purpose.

Establishment of prisons

5. (1) The Minister may, by notice in the *Gazette*, establish prisons for the detention and treatment in accordance with this Act of persons who may lawfully be detained in prison. 30
- (2) Any prison established under subsection (1) may serve one or more districts as circumstances may require, and for the purposes of any law relating to magistrates' courts any prison established to serve more than one district is deemed to be the prison of each district served by that prison. 35

Admission

6. (1) (a) A person may not be committed to a prison without a valid warrant for his or her detention.
- (b) Despite the wording of the warrant relating to the place of detention but subject to the provisions of this Act, such warrant authorises the Commissioner to detain the person concerned at any prison. 40
- (2) At every prison there must be a register in which the following must be recorded:
- (a) information concerning the identity of the prisoner;
 - (b) the reason for the committal and the authority therefor; and
 - (c) the day and hour of admission and release. 45
- (3) On admission, a prisoner must be informed promptly of his or her right to—
- (a) choose and consult with a legal practitioner; or
 - (b) have a legal practitioner assigned by the State, at state expense, if substantial injustice would otherwise result.

(4) (a) On admission a prisoner must be provided with written information in a language which he or she understands about the rules governing the treatment of the prisoners in his or her category, the disciplinary requirements, the authorised channels of communication for complaints and requests and all such other matters as are necessary to enable him or her to understand his or her rights and obligations. 5

(b) If a prisoner is illiterate, a correctional official must explain this written information to the prisoner, if necessary through an interpreter.

(c) The prisoner must confirm that he or she has understood the information so conveyed.

(5) As soon as possible after admission, every prisoner must undergo a health status examination, which must include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act No. 63 of 1977), if in the opinion of the medical officer it is necessary. 10

(6) On admission the Commissioner must make a preliminary security classification of the prisoner. 15

Accommodation

7. (1) Prisoners 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. 20

(2) (a) Sentenced prisoners must be kept separate from unsentenced prisoners.

(b) Male prisoners must be kept separate from female prisoners.

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

(d) Further requirements that prisoners of specific age, health categories or security risk categories must be kept separate must be prescribed by regulation. 25

(3) There may be departures from the provisions of subsection (2)(a) to (c) if such departures are approved by the Head of Prison and effected under supervision of a correctional official and are undertaken for the purpose of providing development or support services or medical treatment, but under no circumstances may there be departures in respect of sleeping accommodation. 30

Nutrition

8. (1) Each prisoner must be provided with an adequate diet to promote good health, as prescribed in the regulations.

(2) Such diet must make provision for the nutritional requirements of children, pregnant women and any other category of prisoners whose physical condition requires a special diet. 35

(3) Where reasonably practicable, dietary regulations must take into account religious requirements and cultural preferences.

(4) The medical officer may order a variation in the prescribed diet for a prisoner and the intervals at which the food is served, when such a variation is required for medical reasons. 40

(5) Food must be well prepared and served at intervals of not less than four and a half hours and not more than 14 hours between the evening meal and breakfast during each 24-hour period. 45

(6) Clean drinking water must be available to every prisoner.

Hygiene

9. (1) Every prisoner must keep his or her person, clothing, bedding and cell clean and tidy.

(2) The Department must provide the means to do so. 50

Clothing and bedding

10. (1) The Department must provide every prisoner with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.

(2) Despite the provisions of subsection (1), unsentenced prisoners may be allowed to retain or acquire appropriate clothing or bedding.

Exercise

11. Every prisoner 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. 5

Health care

12. (1) The Department must provide, within its available resources, adequate health care services, based on the principles of primary health care, in order to allow every prisoner to lead a healthy life. 10

(2) (a) Every prisoner has the right to adequate medical treatment but no prisoner is entitled to cosmetic medical treatment at State expense.

(b) Medical treatment must be provided by a medical officer, medical practitioners or by a specialist or health care institution or person or institution identified by such medical officer except where the medical treatment is provided by a medical practitioner in terms of subsection (3). 15

(3) Every prisoner may be visited and examined by a medical practitioner of his or her choice and, subject to the permission of the Head of Prison, may be treated by such practitioner, in which event the prisoner is personally liable for the costs of any such consultation, examination, service or treatment. 20

(4) (a) Every prisoner should be encouraged to undergo medical treatment necessary for the maintenance or recovery of his or her health.

(b) No prisoner may be compelled to undergo medical examination, intervention or treatment without informed consent unless failure to submit to such medical examination, intervention or treatment will pose a threat to the health of other persons. 25

(c) Except as provided in paragraph (d), no surgery may be performed on a prisoner without his or her informed consent, or, in the case of a minor, with the written consent of his or her legal guardian.

(d) Consent to surgery is not required if, in the opinion of the medical practitioner who is treating the prisoner, the intervention is in the interests of the prisoner's health and the prisoner is unable to give such consent, or, in the case of a minor, if it is not possible or practical to delay it in order to obtain the consent of his or her legal guardian. 30

Contact with community

13. (1) The Department must encourage prisoners to maintain contact with the community and enable them to stay abreast of current affairs. 35

(2) The Department must give prisoners the opportunity, under such supervision as may be necessary, of communicating with and being visited by at least their spouses or partners, next of kin, chosen religious counsellors and chosen medical practitioners.

(3) In all circumstances, a minimum of one hour must be allowed for visits each month. 40

(4) If a prisoner is not able to receive visits from his or her spouse, partner or next of kin, the prisoner is entitled to be visited by any other person each month.

(5) A prisoner who is a foreign national must be allowed to communicate with the appropriate diplomatic or consular representative or, where there is no such representative, with a diplomatic representative of the state or international organisation whose task it is to protect the interests of such prisoner. 45

(6) (a) On admission to a prison and after transfer to another prison, a prisoner must notify his or her next of kin that he or she is being detained in a particular prison, and if—

- (i) the next of kin are unknown, the prisoner may notify any other relative; 50
- (ii) the prisoner does not wish to notify his or her next of kin, the prisoner must indicate this to the Head of Prison.

(b) The Commissioner must ensure that all reasonable steps are taken to enable a prisoner to notify his or her next of kin in terms of paragraph (a) and, if necessary, steps must be taken to notify his or her next of kin on his or her behalf.

(c) (i) In the case of a prisoner who is a child, the Commissioner must notify the appropriate state authorities who have statutory responsibility for the education and welfare of children as well as the parents of the prisoner when this is required in terms of paragraph (a). 5

(ii) If no parent is available, the Commissioner must notify the legal guardian and if the legal guardian is not available the next of kin or other relative must be notified. 10

(iii) A prisoner who is a child may not refuse to allow notification.

(d) If requested by the spouse, partner or next of kin, the Commissioner must as soon as practicable, with the written consent of the prisoner, give particulars of the place where the prisoner is detained.

Religion, belief and opinion

14. (1) A prisoner must be allowed freedom of conscience, religion, thought, belief and opinion. 15

(2) A prisoner may attend religious services and meetings held in the prison freely and voluntarily and may have in his or her possession religious literature.

(3) Where practicable, places of worship must be provided at every prison for prisoners of all religious denominations. 20

(4) No prisoner may be compelled to attend religious services or meetings or to take part in religious practices.

Death in prison

15. (1) Where a prisoner dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of Prison must in terms of section 2 of the Inquests Act, 1959 (Act No. 58 of 1959), report such death. 25

(2) Any death in prison must be reported forthwith to the Inspecting Judge who may carry out or instruct the Commissioner to conduct any enquiry.

(3) The Head of Prison must forthwith inform the next of kin of the prisoner who has died or, if the next of kin are unknown, any other relative. 30

Development and support services

16. (1) The Department may provide development and support services even when not required to do so by this Act.

(2) In all instances, when the Department does not provide such services, the Commissioner must inform prisoners of services available from other sources and put prisoners who request such services in touch with appropriate agencies. 35

Access to legal advice

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

(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, but legal confidentiality must be respected. 40

(3) The Head of Prison must take reasonable steps to enable prisoners to exercise the substantive rights referred to in section 6(3).

(4) Prisoners facing trial or sentence must be provided with the opportunities and facilities to prepare their defence. 45

Reading material

18. (1) Every prisoner must be allowed access to available reading material of his or her choice, unless such material constitutes a security risk or is not conducive to his or her rehabilitation.

(2) Such reading material may be drawn from a library in the prison or may be sent to the prisoner from outside the prison in a manner prescribed by regulation. 5

Children

19. (1) (a) Every prisoner who is a child and is subject to compulsory education must attend and have access to such educational programmes.

(b) Where practicable, all children who are prisoners not subject to compulsory education must be allowed access to educational programmes. 10

(2) The Commissioner must provide every prisoner who is a child with social work services, religious care, recreational programmes and psychological services.

(3) The Commissioner must, if practicable, ensure that prisoners who are children remain in contact with their families through additional visits and by other means. 15

Mothers of young children

20. (1) A female prisoner may be permitted, subject to such conditions as may be prescribed, to have her child with her until such child is five years of age.

(2) The Department is responsible for food, clothing, health care and facilities for the sound development of the child for the period that such child remains in prison. 20

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

Complaints and requests

21. (1) Every prisoner must, on admission and on a daily basis, be given the opportunity of making complaints or requests to the Head of Prison or a correctional official authorised to represent such Head of Prison. 25

(2) The official referred to in subsection (1) must—

(a) record all such complaints and requests and any steps taken in dealing with them; 30

(b) deal with complaints and requests promptly and inform the prisoner of the outcome; and

(c) if the complaint concerns an alleged assault, ensure that the prisoner undergoes an immediate medical examination and receives the prescribed treatment. 35

(3) If a prisoner is not satisfied with the response to his or her complaint or request, the prisoner may indicate this together with the reasons for the dissatisfaction to the Head of Prison, who must refer the matter to the Area Manager.

(4) The response of the Area Manager must be conveyed to the prisoner.

(5) If not satisfied with the response of the Area Manager, the prisoner may refer the matter to the Independent Prison Visitor, who must deal with it in terms of the procedures laid down in section 94. 40

Part B***Discipline*****General** 45

22. (1) Discipline and order must be maintained with firmness but in no greater measure than is necessary for security purposes and good order in prison.

(2) In case of any conviction in a court of law for an offence committed by a person

whilst a prisoner, the Department, on the strength of such conviction, may without any further inquiry take disciplinary action in terms of this Act.

(3) Disciplinary action may be taken against any prisoner, even though criminal proceedings may be pending or in progress against such prisoner.

(4) No prisoner must in any way be involved in the implementation of any disciplinary measures. 5

Disciplinary infringements

- 23.** (1) A prisoner commits a disciplinary infringement if he or she—
- (a) replies dishonestly to legitimate questions put by a correctional official or other person employed in a prison; 10
 - (b) disobeys a lawful command or order by a correctional official or fails to comply with any regulation or order;
 - (c) is abusive to any person;
 - (d) fails or refuses to perform any labour or other duty imposed or authorised by this Act; 15
 - (e) is careless or negligent with regard to any labour or duty imposed or authorised by this Act;
 - (f) uses insulting, obscene or threatening language;
 - (g) conducts himself or herself indecently by word, act or gesture;
 - (h) commits an assault; 20
 - (i) communicates with any person at a time when or a place where it is prohibited;
 - (j) makes unnecessary noise or causes a nuisance;
 - (k) without permission leaves the cell or other assigned place;
 - (l) in any manner defaces or damages any part of the prison or any article therein or any state property; 25
 - (m) possesses an unauthorised article;
 - (n) commits theft;
 - (o) creates or participates in a disturbance or foments a mutiny or engages in any other activity that is likely to jeopardise the security or order of a prison; 30
 - (p) professes to be a member of a gang or takes part in gang activities;
 - (q) makes a dishonest accusation against a correctional official or fellow prisoner;
 - (r) conceals, destroys, alters, defaces or disposes of an identification card, document or any issued article;
 - (s) commits an act with the intention of endangering his or her life, injuring his or her health or impairing his or her ability to work; or 35
 - (t) attempts to do anything referred to in this section.
- (2) A prisoner who assists, conspires with or incites another person to contravene a provision of subsection (1) commits a disciplinary infringement.

Procedures and penalties 40

24. (1) Disciplinary hearings must be fair and may be conducted either by a disciplinary official or a Head of Prison.

(2) A hearing before a Head of Prison must be conducted informally and without representation. At such hearing the prisoner must be informed of the allegation against him or her and have the right to refute the allegation. 45

(3) Where the hearing takes place before the Head of Prison, the following penalties may be imposed severally or in the alternative:

- (a) a reprimand;
 - (b) a loss of gratuity for a period not exceeding one month;
 - (c) restriction of amenities not exceeding seven days. 50
- (4) At a hearing before a disciplinary official a prisoner—
- (a) must be informed of the allegation in writing;

- (b) has the right to be present throughout the hearing;
 - (c) has the right to be heard, to cross-examine and to call witnesses; and
 - (d) has the right to be given reasons for the decision.
- (5) Where the hearing takes place before a disciplinary official, the following penalties may be imposed severally or in the alternative: 5
- (a) a reprimand;
 - (b) a loss of gratuity for a period not exceeding two months;
 - (c) restriction of amenities not exceeding 42 days;
 - (d) in the case of serious or repeated infringements, solitary confinement for a period not exceeding 30 days. 10
- (6) The penalties referred to in subsections (3) and (5) may be suspended for such period and on such conditions as the presiding official deems fit.
- (7) (a) At the request of the offender proceedings resulting in any penalty other than solitary confinement must be referred for review to the Commissioner.
- (b) The Commissioner may confirm or set aside the decision or penalty and substitute an appropriate order for it. 15

Solitary confinement

25. (1) A penalty of solitary confinement must be referred to the Inspecting Judge for review. The Inspecting Judge must within three days, after considering the record of the proceedings and a report from a registered nurse, psychologist or the medical officer on the health status of the prisoner concerned, confirm or set aside the decision or penalty and substitute an appropriate order for it. 20
- (2) The penalty of solitary confinement may only be implemented when the Inspecting Judge has confirmed such penalty.
- (3) A prisoner in solitary confinement must be visited at least once every four hours by a correctional official, once a day by the Head of Prison, and his or her health assessed once a day by a registered nurse or psychologist or a medical officer. 25
- (4) Solitary confinement must be discontinued if in the view of the registered nurse, psychologist or medical officer it poses a threat to the physical or mental health of the prisoner. 30

Part C

Security

Safe custody

26. (1) The right of every prisoner to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of correctional officials and the safe custody of all prisoners. 35
- (2) In order to achieve these objectives and subject to the limitations outlined in sections 27 to 35, a correctional official may—
- (a) search the person of a prisoner, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the prison or of any person, or which could be used as evidence in a criminal trial or disciplinary proceedings; 40
 - (b) take steps to identify the prisoner;
 - (c) classify prisoners and allocate segregated accommodation, including single cells; 45
 - (d) apply mechanical means of restraint; and
 - (e) use reasonable force.

Searches

27. (1) The person of a prisoner may be searched by a manual search, or search by technical means, of the clothed body. 50
- (2) Upon reasonable grounds, the person of a prisoner may be searched in the following ways:

- (a) a search by visual inspection of the naked body;
 - (b) search by the physical probing of any bodily orifice;
 - (c) a search by taking a urine or other excretion sample for analysis;
 - (d) a search by the use of an X-ray machine or technical device, by a qualified technician, if there are reasonable grounds for believing that a prisoner has swallowed or excreted any object or substance that may be needed as an exhibit in a hearing or may pose a danger to himself or herself or to correctional officials or to the security of the prison; and 5
 - (e) by detaining a prisoner in a manner prescribed by regulation for the recovery by the normal excretory process of an object that may pose a danger to himself or herself, to any correctional official to any other person or to the security of the prison. 10
- (3) A search of the person of a prisoner is subject to the following restrictions:
- (a) the search must be conducted in a manner which invades the privacy and undermines the dignity of the prisoner as little as possible; 15
 - (b) a correctional official of the same gender as the prisoner must conduct the search and correctional officials of the other gender must not be present;
 - (c) all searches must be conducted in private;
 - (d) searches contemplated in subsection (1) (c), (d), (e) and (f) must be authorised by a medical officer and be carried out or supervised by a medical practitioner or registered nurse depending on the procedure necessary to effect the search; and 20
 - (e) any search contemplated in subsection (1) (b), (c) or (f) must be authorised by the Head of Prison.
- (4) A correctional official or person conducting a search in terms of this section may seize anything found. 25

Identification

28. (1) To ensure safe custody the following steps may be taken to identify a prisoner:
- (a) the taking of finger and palm prints;
 - (b) the taking of photographs; 30
 - (c) the ascertaining of external physical characteristics;
 - (d) the taking of measurements; and
 - (e) referral of the prisoner to the medical officer to ascertain the age of the prisoner.
- The prisoner may request that, at his or her own expense, his or her private medical practitioner be present at an investigation referred to in paragraph (e). 35
- (2) Identification data obtained in this way must be included in the prisoner's personal file.
- (3) If as a result of ascertaining the age of a prisoner in terms of subsection (1)(e) or for any other reason it appears to the Head of Prison that the court's determination of the age of the said prisoner is incorrect, the Head of Prison may remit the case to the court concerned for a reappraisal of the prisoner's age. 40

Security classification

29. Security classification is determined by the extent to which the prisoner presents a security risk and so as to determine the prison or part of a prison in which he or she is to be detained. 45

Segregation

30. (1) Segregation of a prisoner for a period of time, which may be for part of or the whole day and which may include detention in a single cell, is permissible—
- (a) upon the written request of a prisoner; 50

- (b) to give effect to the penalty of the restriction of amenities imposed in terms of section 24(3)(c) or (5)(c) to the extent necessary to achieve this objective;
- (c) if such detention is prescribed by the medical officer on medical grounds;
- (d) when a prisoner displays violence or is threatened with violence;
- (e) if a prisoner has been recaptured after escape and there is a reasonable suspicion that such prisoner will again escape or attempt to escape; and
- (f) if at the request of the police, the Head of Prison considers that it is in the interests of the administration of justice.

(2) (a) A prisoner who is segregated must be closely supervised and any prisoner segregated in terms of subsection (1)(b) to (f) must be visited at least once a day by the registered nurse, psychologist or medical officer.

(b) Segregation must be discontinued if the registered nurse, psychologist or medical officer determines that it poses a threat to the health of the prisoner.

(c) If a registered nurse has reason to believe that segregation poses a threat to the health of the prisoner he or she must immediately refer the matter to the medical officer or psychologist.

(3) A request for segregation in terms of subsection (1)(a) may be withdrawn at any time.

(4) Segregation in terms of subsection (1)(c) to (f) may only be enforced for the minimum period that is necessary and this period may not, subject to the provisions of subsection (5), exceed seven days.

(5) If the Head of Prison believes that it is necessary to extend the period of segregation in terms of subsection (1)(c) to (f) and if the medical officer or psychologist certifies that such an extension would not be harmful to the health of the prisoner, he or she may, with the permission of the Commissioner, extend the period of segregation for a period not exceeding 30 days.

(6) All instances of segregation and extended segregation must be reported immediately by the Head of Prison to the Area Manager and to the Inspecting Judge.

(7) A prisoner who is subjected to segregation may refer the matter to the Inspecting Judge who must decide thereon within 72 hours after receipt thereof.

(8) Segregation must be for the minimum period, and place the minimum restrictions on the prisoner, compatible with the purpose for which the prisoner is being segregated.

(9) Except in so far as it may be necessary in terms of subsection (1)(b) segregation may never be ordered as a form of punishment or disciplinary measure.

Mechanical restraints

31. (1) If it is necessary for the safety of a prisoner or any other person, or the prevention of damage to any property, or if the Head of Prison has a reasonable suspicion that a prisoner may escape, or if requested by a court, the Head of Prison may order that a prisoner be restrained by shackles applied to the body.

(2) A prisoner may not be brought before court whilst in shackles, unless authorised by the court.

(3) (a) Shackles may only be used for the minimum period necessary and this period may not, subject to the provisions of paragraph (b), exceed seven days.

(b) The Commissioner may extend such period for a maximum period not exceeding 30 days after consideration of a report by a medical officer or psychologist.

(4) All cases of the use of such mechanical restraints must be reported immediately by the Head of Prison to the Area Manager and to the Inspecting Judge.

(5) A prisoner who is subjected to such restraints may appeal against the decision to

the Inspecting Judge who must decide thereon within 72 hours after receipt thereof.

(6) Mechanical restraints may never be ordered as a form of punishment or disciplinary measure.

Use of force 5

32. (1) (a) Every correctional official is authorised to use all lawful means to detain in safe custody all prisoners 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.

(b) A minimum degree of force must be used and the force must be proportionate to the objective. 10

(2) Force may be used only when authorised by the Head of Prison, unless a correctional official reasonably believes that the Head of Prison would authorise the use of force and that the delay in obtaining such authorisation would defeat the objective.

(3) If, after a correctional official has tried to obtain authorization, force is used without prior permission, the correctional official must report the action taken to the Head of Prison as soon as reasonably possible. 15

(4) Any such permission or instruction to use force may include the use of non-lethal incapacitating devices or firearms, subject to the restrictions set out in sections 33 and 34.

(5) If force was used, the prisoner concerned must undergo an immediate medical examination and receive the prescribed treatment. 20

Non-lethal incapacitating devices

33. (1) Non-lethal incapacitating devices may only be issued to a correctional official on the authority of the Head of Prison.

(2) Such devices may only be used by a correctional official specifically trained in their use. 25

(3) Such devices may be used in the manner prescribed by regulation and then only —

(a) if a prisoner 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 or safety of prisoners or others is threatened by one or more prisoners; or 30

(c) for the purpose of preventing an escape.

(4) Whenever such devices are used, their use must be reported in writing and as prescribed by regulation.

Firearms 35

34. (1) A firearm may only be issued to a correctional official on the authority of the Head of Prison.

(2) A firearm may only be used by a correctional official specifically trained in its use.

(3) A firearm must be used in the manner prescribed by regulation and only when the security of the prison or the safety of prisoners or others is threatened. 40

(4) Whenever a firearm is used its use must be reported in writing and as prescribed by regulation.

Other weapons

35. (1) The use of weapons other than non-lethal incapacitating devices or firearms may be authorised by the Commissioner as prescribed by regulation. 45

(2) Such regulations must prescribe the training, manner of use, control and reporting procedures.

CHAPTER IV

SENTENCED PRISONERS

Objective of implementation of sentence of imprisonment

36. With due regard to the fact that the deprivation of liberty serves the purposes of punishment, the implementation of a sentence of imprisonment has the objective of enabling the sentenced prisoner to lead a socially responsible and crime-free life in the future. 5

General principles

37. (1) In addition to the obligations which apply to all prisoners every sentenced prisoner must— 10

- (a) participate in the assessment process and the design and implementation of any development plan or programme aimed at achieving the said objective; and
- (b) perform any labour which is related to any development programme or which generally is designed to foster habits of industry, unless the medical officer or psychologist certifies in writing that he or she is physically or mentally unfit to perform such labour. 15

(2) In addition to providing a regime which meets the minimum requirements of this Act, the Department must seek to provide amenities which will create an environment in which sentenced prisoners will be able to live with dignity and develop the ability to lead a socially responsible and crime-free life. 20

(3) All such amenities must be prescribed by regulation and as far as possible be available to all sentenced prisoners unless, for economic or other practical reasons, such amenities can be introduced in some prisons only, in which case, their partial introduction should be on a non-discriminatory basis. 25

(4) In addition to the general purpose stated in section 22, the disciplinary system for sentenced prisoners shall have the particular aim of promoting self-respect and responsibility on the part of the prisoner.

Assessment

38. (1) As soon as possible after admission as a sentenced prisoner, such prisoner must be assessed to determine his or her— 30

- (a) security classification for purposes of safe custody;
- (b) health needs;
- (c) educational needs;
- (d) social and psychological needs; 35
- (e) religious needs;
- (f) specific development programme needs;
- (g) work allocation;
- (h) allocation to a specific prison; and
- (i) needs regarding reintegration into the community. 40

(2) In the case of a sentence of imprisonment of 12 months or more, the manner in which the sentence should be served must be planned in the light of this assessment and any comments by the sentencing court.

Commencement, computation and termination of sentences

39. (1) Subject to the provisions of subsection (2) a sentence of imprisonment takes effect from the day on which that sentence is passed, unless it is suspended under the provisions of any law or unless the sentenced person is released on bail pending a decision of a higher court, in which case the sentence takes effect from the day on which he or she submits to or is taken into custody. 45

(2) (a) Subject to the provisions of paragraph (b), a person who receives more than one sentence of imprisonment or receives additional sentences while serving a term of 50

imprisonment, must serve each such sentence, 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 but—

- (i) any determinate sentence of imprisonment to be served by any person runs concurrently with a life sentence or with sentence of imprisonment to be served by such person in consequence of being declared an habitual criminal or a dangerous criminal; 5
 - (ii) one or more life sentences and one or more sentences to be served in consequence of a person being declared an habitual criminal or a dangerous criminal also run concurrently; and 10
 - (iii) no placement or release of a dangerous criminal may take place other than in terms of section 286B of the Criminal Procedure Act.
- (b) In the case of the imposition of more than one period of imprisonment, the non-parole period or periods, fixed by the court must be served consecutively before a prisoner becomes eligible for parole. 15
- (3) The date of expiry of any sentence of imprisonment being served by a prisoner who escapes from lawful custody or who is unlawfully discharged is postponed by the period by which such sentence was interrupted.
- (4) Any person whose sentence expires on a Sunday or public holiday must be discharged on the day preceding such Sunday or public holiday. 20
- (5) (a) If a person receives more than one sentence of correctional supervision referred to in section 276(1)(h) of the Criminal Procedure Act, 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, each such sentence must 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. 25
- (b) If a person sentenced to correctional supervision is sentenced to imprisonment for an offence committed before the commencement of the correctional supervision, the correctional supervision must be postponed until placement under correctional supervision has again been approved or until the expiration, setting aside or remission of the sentence of imprisonment. 30
- (c) If a person sentenced to correctional supervision is placed on parole, the correctional supervision must be served before the parole may commence. 35
- (d) If a person sentenced to correctional supervision or parolee is sentenced to periodical imprisonment, the sentence of periodical imprisonment and the correctional supervision or parole, as the case may be, must be served simultaneously, unless the court directs otherwise.
- (e) If a person sentenced to correctional supervision or parolee is served with a warrant of detention for contempt of court, the correctional supervision or parole, as the case may be, must be postponed for the period specified in the warrant of detention. 40
- (f) If a parolee is sentenced to imprisonment for an offence committed before the commencement of the parole, the parole must be regarded as cancelled and the matter be referred to the Correctional Supervision and Parole Board concerned for consideration. 45

Labour of sentenced prisoners

- 40.** (1) Sufficient work must as far as is practicable be provided to keep prisoners active for a normal working day.
- (2) A sentenced prisoner may not work or conduct any business on his or her own account. 50
- (3) A sentenced prisoner 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.
- (4) The gratuity that sentenced prisoners receive for their labour and their conditions of work must be prescribed by regulation.
- (5) A prisoner may never be instructed or compelled to work as a form of punishment or disciplinary measure. 55

Treatment, development and support services

41. (1) The Department must provide or give access to as full a range of programmes and activities as is practicable to meet the educational and training needs of sentenced prisoners.

(2) Sentenced prisoners who are illiterate or children may be compelled to take part in the educational programmes offered in terms of subsection (1). 5

(3) The Department must provide social and psychological services in order to develop and support sentenced prisoners 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. 10

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

(6) Sentenced prisoners may be compelled to participate in programmes and to use services offered in terms of subsections (1), (3) and (4) where in the opinion of the Commissioner their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community. 15

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

Case Management Committee 20

42. (1) At each prison there must be a Case Management Committee composed of correctional officials as prescribed by regulation.

(2) The Case Management Committee must—

(a) ensure that each sentenced prisoner has been assessed, and that for prisoners serving more than twelve months there is a plan specified in section 38(2); 25

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

(c) make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of a prisoner under community corrections; 30

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

(i) the offence or offences for which the sentenced prisoner is serving a term of imprisonment 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; 35

(ii) the previous criminal record of such prisoner;

(iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such prisoner; 40

(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 who has been declared an habitual criminal which indicates that—

(aa) there is a reasonable probability that the prisoner will in future abstain from crime and lead a useful and industrious life; or 45

(bb) the prisoner is no longer capable of engaging in crime; or

(cc) for any other reason, it is desirable to place the prisoner 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 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; 50

- (vii) the possible placement of such prisoner 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 contemplated in paragraph (d) to him or her in respect of any prisoner sentenced to 12 months' imprisonment or less. 5

(3) A prisoner 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 and be afforded the opportunity to submit written representations to the Correctional Supervision and Parole Board or Area Manager, as the case may be. 10

Location and transfer of prisoners

43. (1) A sentenced prisoner must be housed at the prison 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. 15

(2) The transfer of a prisoner is subject to the same consideration.

(3) A prisoner must be examined by the registered nurse or medical officer before his or her transfer. Where such a prisoner is being treated by a medical practitioner, he or she must not be transferred until the prisoner has been discharged from the treatment or the transfer has been approved by the medical officer after consultation with the Head of Prison. 20

Temporary leave

44. (1) The Commissioner may grant permission in writing on such conditions and for such periods as he or she may specify, for a sentenced prisoner to leave prison temporarily for the purpose of— 25

- (a) compassionate leave;
- (b) treatment, development or support programmes;
- (c) consolidation of family ties;
- (d) preparation for release; or 30
- (e) any other reason related to the successful reintegration of the prisoner into the community.

(2) (a) A prisoner who is granted permission to leave prison remains a prisoner even while temporarily outside prison and may be placed under escort or under supervision. 35

(b) If the prisoner is placed under supervision the provisions of section 58 relating to supervision will apply, with the necessary changes.

(3) (a) Any permission in terms of subsection (1) may be withdrawn at any time by the Commissioner.

(b) In that event the Commissioner must inform the prisoner concerned and if such prisoner is outside prison direct him or her to return to prison by a specified time. 40

(4) A prisoner who fails to return to prison at the specified time, is guilty of an offence and liable on conviction to the penalty prescribed in section 118.

Placement and release

45. (1) A sentenced prisoner must be prepared for placement, release and re-integration into society by participating in a pre-release programme. 45

(2) Where a prisoner is to be placed under correctional supervision or to be released on parole there must be compliance with section 56(3).

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

CHAPTER V

UNSENTENCED PRISONERS

General principles

46. (1) Unsentenced prisoners may be subjected only to those restrictions necessary for the maintenance of security and good order in the prison and must, where practicable, be allowed all the amenities to which they could have access outside prison. 5
- (2) The amenities available to unsentenced prisoners which may be restricted for disciplinary purposes must be determined by regulation.

Clothing

47. No unsentenced prisoner may be compelled to wear prison clothes, unless the prisoner's own clothing is improper or insanitary or needs to be preserved in the interests of the administration of justice and the prisoner is unable to obtain other suitable clothing from another source. 10

Food and drink

48. Subject to restrictions which may be prescribed by regulation, unsentenced prisoners may have food and drink sent to them in prison. 15

Visitors and communication

49. Subject to restrictions which may be laid down by regulation, unsentenced prisoners may receive visitors and write and receive letters and communicate telephonically. 20

CHAPTER VI

COMMUNITY CORRECTIONS

Objectives of community corrections

50. (1) The objectives of community corrections are 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. These objectives do not apply to restrictions imposed in terms of sections 62(f) or 71 of the Criminal Procedure Act. 25
- (2) The immediate aim of the implementation of community corrections is to ensure that persons subject to community corrections abide by the conditions imposed upon them in order to protect the community from offences which such persons may commit. 30

Persons subject to community corrections

51. (1) Persons subject to community corrections are—
- (a) those placed under correctional supervision in terms of sections 6(1)(c), 276(1)(h), 276(1)(i), 276A(3)(e)(ii), 286B(4)(b)(ii), 286B(5)(b)(iii), 287(4)(a), 287(4)(b), 297(1)(a)(i)(ccA), 297(1)(b) or 297(4) of the Criminal Procedure Act; 35
 - (b) while out of prison, prisoners who have been granted temporary leave in terms of section 44;
 - (c) while out of prison, those placed on day parole in terms of section 55;
 - (d) those placed on parole in terms of section 74; and 40
 - (e) those placed under the supervision of a correctional official in terms of sections 62(f), 71, 290(1)(a) and 290(3) of the Criminal Procedure Act.
- (2) No order imposing community corrections may be made unless the person who is

to be subjected to community corrections agrees that it should be made according to the stipulated conditions and undertakes to co-operate in meeting them.

(3) Before the consideration of the placement of a child, the parent or guardian, where practicable, must be informed of the proposed placement.

Conditions relating to community corrections 5

52. (1) When community corrections are ordered, a court, Correctional Supervision and Parole Board, the Commissioner or other body which has the statutory authority to do so, may, subject to the limitations in subsection (2) and the qualifications of this Chapter, stipulate that the person concerned—

- (a) is placed under house detention; 10
- (b) does community service;
- (c) seeks employment;
- (d) takes up and remains in employment;
- (e) pays compensation or damages to victims;
- (f) takes part in treatment, development and support programmes; 15
- (g) participates in mediation between victim and offender or in family group conferencing;
- (h) contributes financially towards the cost of the community corrections to which he or she has been subjected;
- (i) is restricted to one or more magisterial districts; 20
- (j) lives at a fixed address;
- (k) refrains from using or abusing alcohol or drugs;
- (l) refrains from committing a criminal offence;
- (m) refrains from visiting a particular place;
- (n) refrains from making contact with a particular person or persons; 25
- (o) refrains from threatening a particular person or persons by word or action;
- (p) is subject to monitoring;
- (q) in the case of a child, is subject to the additional conditions as contained in section 70.

(2) These conditions may be stipulated concurrently but— 30

- (a) parole granted in terms of section 74 may not include the condition of compensation referred to in subsection (1)(e) unless compensation was part of the original sentence of the court;
- (b) supervision by a correctional official imposed in terms of sections 62(f) or 71 of the Criminal Procedure Act, may not include the conditions referred to in subsection (1)(b) to (h); 35
- (c) day parole granted in terms of section 55 may not include the conditions referred to in subsection (1)(a) or the conditions of compensation referred to in subsection (1)(e) unless payment of compensation was part of the original sentence of the court; and 40
- (d) temporary leave granted in terms of section 44 may not include the conditions referred to in subsection (1)(b) to (g).

Serving of community corrections

53. Community corrections are served in terms of section 39 of this Act.

Day parole 45

54. (1) A person granted day parole remains a prisoner while in prison and is otherwise a person subject to community corrections but—

- (a) such person may wear his or her own clothing whilst he or she is on day parole; and
- (b) if he or she can afford it, must pay for board and lodging and medical services. 50

(2) The Commissioner, Correctional Supervision and Parole Board, court or other

body must decide on the duration of placement on day parole and must inform the Head of Prison who must inform the prisoner concerned of that determination.

(3) A person on day parole who fails to report at prison is guilty of an offence and liable on conviction of the penalty prescribed in section 118.

Commencement 5

55. (1) Community corrections may not commence without a warrant or appropriate order being lodged at the community corrections office.

(2) At every community corrections office the following must be recorded in a register:

- (a) information about the identity of the person subject to community corrections; 10
- (b) the authority for the imposition of community corrections;
- (c) the conditions of the community corrections order; and
- (d) the date and hour of commencement and expiry of the sentence or period of community corrections.

(3) (a) At the commencement of community corrections the person concerned must be informed in writing of— 15

- (i) the conditions which will be imposed on him or her in a form and language which will enable him or her to understand what he or she is expected to do or to refrain from doing;
- (ii) the channels of communication for complaints and requests. 20

(b) If the person is illiterate, a correctional official must explain this written information through an interpreter if necessary.

(c) The person concerned must confirm that the information has been understood.

(4) At the commencement of the community corrections, the person concerned—

- (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; and 25
- (b) may be required to submit to a medical examination to determine physical and mental fitness with reference to the conditions imposed.

Medical examination 30

56. (1) If at any time whilst a person is subject to community corrections a correctional official has reason to believe that a medical examination is required in order to determine whether the conditions set for the person are appropriate in the light of his or her health, the correctional official may request a medical practitioner to conduct such an examination. 35

(2) A person subject to community corrections must submit to such an examination.

Supervision

57. (1) All persons subject to community corrections must be supervised in the community by correctional officials.

(2) Such supervision must not invade the privacy of the person concerned more than is necessary to ensure compliance with the conditions of the community corrections imposed. 40

(3) If during such supervision it is reasonably necessary to ensure the safety of a correctional official or of any other person, a correctional official may search a person subject to community corrections and confiscate any weapon found. 45

(4) A person subject to community corrections must facilitate the supervision process and in particular must not threaten, abuse, obstruct or deliberately avoid a correctional official.

(5) A person subject to community corrections may not be under the influence of alcohol or other drug to an extent that impairs the process of supervision. 50

(6) A person subject to community corrections may be required to attend and

participate in meetings with the correctional official or officials responsible for supervising his or her behaviour or with a Supervision Committee.

Supervision Committee

58. (1) There must be a Supervision Committee at each community corrections office composed, as prescribed by regulation, of correctional officials involved in the supervision of persons subject to community corrections and, if practicable, of a person or persons from the community who are experts in behavioural sciences. 5

(2) The Supervision Committee must determine the level of supervision for each person subject to community corrections and must review its determination at regular intervals. 10

(3) The Supervision Committee must review at regular intervals the extent to which the objectives of community corrections are being achieved in respect of each person subject to community corrections.

(4) An additional review may be held at the request of the person subject to community corrections or of the correctional official directly responsible for the supervision of such person. 15

(5) A person subject to community corrections must be informed of a meeting where his or her case will be discussed, the issues which will be raised and that he or she may make written submissions to be considered by the Supervision Committee.

(6) After having reviewed the extent to which the objectives of community corrections are being achieved in respect of a person subject to community corrections, the Supervision Committee must— 20

(a) decide whether the means and level of supervision applied to such person should be modified; and

(b) submit a report and advise the Commissioner on the desirability of— 25

(i) applying for a change in the conditions of the community corrections imposed on such person; or

(ii) issuing a warrant for the arrest of such a person.

House detention

59. Where a condition of house detention is set in terms of section 53(1)(a), it must stipulate the hours to which the person is restricted daily to his or her dwelling and the overall duration of the limitation. 30

Community service

60. (1) Where a condition of community service is set as part of community corrections, it must stipulate the number of hours which the person is required to serve, which shall not be less than 16 hours per month, unless the court otherwise directed. 35

(2) (a) The court, Correctional Supervision and Parole Board or other body which has the authority to impose community service may specify where such community service is to be done.

(b) Such an order may not be changed without the matter being referred back to the court, Board or other body which set the condition unless it provides that the order may be changed by a Supervision Committee. 40

(c) If such court, Board or other body does not specify where such community service should be performed, the Supervision Committee must specify the place.

Seeking employment

61. (1) A person subject to community corrections who is required in terms of section 53(1)(c) to seek employment, must make a reasonable effort to find employment and must furnish evidence to the Commissioner of the attempts that he or she has made in this regard. 45

(2) The Commissioner must assist in the attempt to find employment. 50

Employment

62. A person subject to community corrections who is required in terms of section 53(1)(d) to take up and remain in employment—

- (a) may not change his or her employment without the permission of the Commissioner;
- (b) must perform the work to the best of his or her ability and comply with the conditions of the contract of employment; and
- (c) may not leave the place of employment during working hours, for purposes unrelated to the employment without the permission of the Commissioner.

5

Compensation

10

63. A person subject to community corrections who is required in terms of section 53(1)(e) to pay compensation—

- (a) must provide the Commissioner with a statement of personal income and expenditure; and
- (b) must submit proof as specified by the Commissioner, of payment of compensation as ordered by the court.

15

Programmes

64. (1) The court, Correctional Supervision and Parole Board or other body which has the authority to impose treatment, development and support programmes in terms of section 53(1)(f) may specify what programmes the person subject to community corrections must follow.

20

(2) Only the court, Board or other body which sets the condition may change it, unless the condition itself provides that it may be changed by a Supervision Committee.

(3) If such court, Board or other body does not specify what programmes the person subject to community corrections should follow, the Supervision Committee must specify such programmes.

25

(4) The person concerned must attend such programmes and stay in attendance for the duration of each individual session of the entire programme, unless leave of absence from a session is granted by the Commissioner.

Contribution to costs

30

65. (1) A person who is required in terms of section 53(1)(h) to make a contribution to the cost of the community corrections and a person on day parole must provide the Commissioner with a statement of income and expenditure.

(2) The Commissioner may, within the means of such person, determine the contribution to costs which that person must make and may adjust it during the period of supervision and day parole.

35

Fixed address

66. (1) When the court, Correctional Supervision and Parole Board or other body which has the authority to impose community corrections, requires a person to live at a fixed address in terms of section 53(1)(j) it must, after consultation with the Commissioner, determine such address.

40

(2) Where an address was stipulated by such court, Board or other body but the Commissioner has subsequently been satisfied that—

- (a) support will not be available to such person living there and that such support cannot be provided from other sources; or
- (b) living at such address will be incompatible with compliance with the prescribed conditions for community corrections,

45

the Commissioner may declare the address unsuitable and refer the matter back to the court, Board or other body to stipulate another address, after consultation with the Commissioner, failing which section 71 shall operate.

50

Use or abuse of alcohol or drugs

67. Where there is a reasonable suspicion that a person has used or abused alcohol or drugs in contravention of a condition set in terms of section 53(1)(k), a correctional official may require such a person to allow a designated medical practitioner 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

Monitoring

68. (1) Where a condition of monitoring is set in terms of section 53(1)(p) it must specify the form of monitoring.
 (2) If such monitoring involves the use of an electronic or other device it must be prescribed by regulation. 10
 (3) The use of such device may infringe on the human dignity and privacy of the person in so far as it is proportionate to the objective.

Additional conditions for children

69. (1) A child who is subject to community corrections in terms of section 53(1)(q), may be required to attend educational programmes whether or not he or she is otherwise subject to compulsory education. 15
 (2) Where any child is subject to supervision in terms of this Chapter, the Commissioner must, in addition to any programmes which the child in terms of section 53(1)(f) may be required to take part in, ensure that if the child requires support he or she has access to adequate social work services, religious care, recreational programmes and psychological services. 20

Non-compliance

70. (1) If the Commissioner is satisfied that a person subject to community corrections has failed to comply with any aspect of the conditions imposed on him or her, or any duty placed upon him or her in terms of any section of this Chapter, the Commissioner may, depending on the nature and seriousness of the non-compliance— 25
 (a) reprimand the person;
 (b) instruct the person to appear before the court, Correctional Supervision and Parole Board or other body which imposed the community corrections; or 30
 (c) issue a warrant for the arrest of such person.
 (2) (a) A warrant issued in terms of subsection (1)(c) may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act.
 (b) A person detained in terms of paragraph (a) must be brought before a court within 48 hours after arrest, which court must make an order as to the further detention and referral of the person to the authority responsible to deal with the matter. 35
 (3) If the Commissioner is satisfied that a person subject to community corrections has failed to meet the conditions imposed on him or her but that such failure is due to a change in circumstances beyond the control of the person concerned, the Commissioner may instruct such person to appear before the court, Correctional Supervision and Parole Board or other body which imposed the community corrections. 40
 (4) If a person subject to community corrections fails to obey an instruction issued in terms of subsection (1)(b) or (3) the Commissioner may issue a warrant in terms of subsection (1)(c) and act in terms of subsection (2).

Change of conditions 45

71. (1) If in the opinion of the Commissioner a change of circumstances calls for a change in the conditions, the Commissioner may apply to the court, Correctional Supervision and Parole Board or other body which ordered the imposition of community corrections, to amend the conditions which make up the community corrections in a particular case. 50
 (2) When an application is made in terms of subsection (1) the Commissioner must

instruct the person undergoing community corrections to appear before such court, Board or other body.

(3) If such person fails to appear, the Commissioner may issue a warrant in terms of section 71(1)(c) for his or her arrest.

Complaints and requests 5

72. (1) Every person subject to community corrections may direct complaints and requests to the head of the community corrections office in the area in which the community corrections is being served or to another correctional official designated by such a head of an office.

(2) The correctional official referred to in subsection (1) must record all such complaints and requests and the steps taken in dealing with them. 10

(3) The correctional official referred to in subsection (1) must deal with such complaints and requests promptly and inform the person subject to community corrections of the outcome.

(4) If such person is dissatisfied with the response to his or her complaint or request by the Head of Community Corrections, he or she may refer the matter to the Area Manager, whose response must be communicated to the person concerned. 15

CHAPTER VII

RELEASE FROM PRISON AND PLACEMENT UNDER CORRECTIONAL SUPERVISION AND ON DAY PAROLE AND PAROLE 20

Length and form of sentences

73. (1) Subject to the provisions of this Act—

- (a) a sentenced prisoner remains in prison for the full period of sentence; and
- (b) a prisoner sentenced to life imprisonment remains in prison for the rest of his or her life. 25

(2) Any sick prisoner whose sentence has expired but whose release is certified by the medical officer to be likely 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 medical officer.

(3) A sentenced prisoner must be released from prison and from any form of community corrections imposed in lieu of part of a sentence of imprisonment when the term of imprisonment imposed has expired. 30

(4) In accordance with the provisions of this Chapter a prisoner may be placed under correctional supervision or on day parole or on parole before the expiration of his or her term of imprisonment. 35

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

- (i) a prisoner must be placed under correctional supervision or on day parole or on parole on a date determined by the Correctional Supervision and Parole Board; or
- (ii) in the case of a prisoner sentenced to life imprisonment on day parole or on parole on a date to be determined by the court. 40

(b) Such placement is subject to the prisoner accepting the conditions for placement.

(6) (a) Subject to the provisions of paragraph (b), a prisoner serving a determinate sentence may not be placed on parole until such prisoner has served either the stipulated non-parole period, or half of the rest of the sentence, but parole must be considered whenever a prisoner has served 25 years of a sentence or cumulative sentences. 45

(b) A person who has been sentenced to—

- (i) periodical imprisonment, must be detained periodically in a prison as prescribed by regulation; 50
- (ii) imprisonment 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 at least 12 months;
- (iii) imprisonment 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; 5
- (iv) life imprisonment, 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;
- (v) imprisonment contemplated in section 52(2) of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), may not be placed on parole unless he or she has served at least four fifths of the term of imprisonment imposed or 25 years, whichever is the shorter, but the court, when imposing imprisonment, may order that the prisoner be considered for placement on parole after he or she has served two thirds of such term. 10 15
- (c) A person who has been declared an habitual criminal may be detained in a prison for a period of 15 years and may not be placed on parole until after a period of at least seven years.
- (7) (a) A person sentenced to imprisonment under section 276(1)(i) of the Criminal Procedure Act, must serve at least one sixth of his or her sentence before being considered for placement under correctional supervision, unless the court has directed otherwise, but if more than one sentence has been imposed under section 276 (1)(i) of the said Act, the person may not be placed under correctional supervision for a period exceeding five years. 20
- (b) If a person has been sentenced to imprisonment under section 276(1)(i) of the Criminal Procedure Act, and to imprisonment for a period not exceeding five years as an alternative to a fine the person must serve at least one sixth of the effective sentences before being considered for placement under correctional supervision, unless the court has directed otherwise. 25
- (c) If a person has been sentenced to imprisonment for— 30
- (i) a definite period under section 276(1)(b) of the Criminal Procedure Act;
- (ii) imprisonment under section 276(1)(i) of the said Act;
- (iii) a period not exceeding five years as an alternative to a fine,
- the person shall serve at least a quarter of the effective sentences imposed or the non-parole period, if any, whichever is the longer before being considered for placement under correctional supervision, unless the court has directed otherwise. 35
- (d) A person sentenced to imprisonment for a definite period in terms of section 276(1)(b) of the said Act may 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. 40

Correctional Supervision and Parole Boards

- 74.** (1) The Minister may—
- (a) name each Correctional Supervision and Parole Board;
- (b) specify the seat for each Board;
- (c) determine and amend the area of jurisdiction of each Board. 45
- (2) The Minister must appoint one or more Correctional Supervision and Parole Boards consisting of—
- (a) a chairperson;
- (b) a vice-chairperson;
- (c) an official of the South African Police Service nominated by the National Commissioner of the South African Police Service; 50
- (d) an official of the Department of Justice and an alternate, both with a legal background, nominated by the Director-General of the Department of Justice;
- (e) two officials of the Department nominated by the Commissioner; and
- (f) two members of the community. 55
- (3) The Commissioner must designate one of the correctional officials referred to in subsection (2)(e) to act as a secretary for a Board.
- (4) If the chairperson is absent from a meeting of the Board, the vice-chairperson must preside at that meeting.

- (5) Five members constitute a quorum for a meeting of a Board and must include the chairperson or vice-chairperson, and an official of the Department of Justice.
- (6) Any decision of a Board must be taken by resolution of the majority of the members present at any meeting of that Board and, in the event of equality of votes, the person presiding shall have the casting vote as well as a deliberative vote. 5
- (7)(a) A member of a Board—
- (i) holds office for such period and on such conditions as the Minister may determine; and
 - (ii) may at any time resign by tendering written notification to the Minister. 10
- (b) The Minister may remove a member from office on grounds of misbehaviour, incapacity or incompetence but such action by the Minister does not preclude disciplinary action against officials in the full-time service of the State as provided for in their conditions of service.
- (c) If any member resigns, is removed from office or dies, the Minister may fill the vacancy by appointing a person in accordance with subsection (1) for the unexpired portion of the term of office of the predecessor. 15
- (8) A member of a Board who is not in the full-time service of the State, may receive such remuneration and allowances as the Commissioner may, on the recommendation of the Commission for Administration, determine with the concurrence of the Minister of Finance. 20

Powers, functions and duties of Correctional Supervision and Parole Boards

- 75.** (1) A Correctional Supervision and Parole Board, having considered the report on any prisoner serving a determinate sentence exceeding 12 months submitted to it by the Case Management Committee in terms of section 42 and in the light of any other information or argument, may— 25
- (a) subject to the provisions of paragraphs (b) and (c), place a prisoner under correctional supervision or day parole or grant parole and, subject to the provisions of section 53, set the conditions of community corrections imposed on the prisoner;
 - (b) in respect of any prisoner having been declared a dangerous criminal in terms of section 286A of the Criminal Procedure Act, make recommendations to the court on the granting of the placement under correctional supervision or day parole or parole and on the period for and, subject to the provisions of section 53, the conditions of community corrections imposed on the prisoner; and 30
 - (c) in respect of any prisoner serving a sentence of life imprisonment, make recommendations to the court on granting of parole or day parole, and, subject to the provisions of section 53, the conditions of community corrections to be imposed to the prisoner. 35
- (2)(a) If the Commissioner on the advice of a Supervision Committee requests a Board to cancel correctional supervision or day parole or parole except where the person concerned was originally serving a sentence of life imprisonment, or to amend the conditions of community corrections imposed on a person, the Board must consider the matter within 14 days but its recommendations may be implemented provisionally prior to the decision of the Board. 40
- (b) After consideration of such conditions the Board may cancel the correctional supervision or day parole or parole, or amend the conditions but if the person concerned refuses to accept the amended conditions, the correctional supervision or day parole or parole must be cancelled. 45
 - (c) If in the case of a person sentenced to life imprisonment the Commissioner, on the advice of a Supervision Committee, requests a Board to advise on the cancellation of parole or day parole or to amend the conditions of community corrections imposed on a person, the Board must within 14 days consider the matter and make recommendations on cancellation or amendment to the court but its recommendations may be implemented provisionally prior to the decision of the court. 50
- (3)(a) Whenever a Board acts in terms of subsection (2)(a) or (c), it must notify the 55

person or prisoner who is subject to community corrections to submit written representations or to appear before it in person or to be represented by any person, except a fellow prisoner, a correctional official or an official of the South African Police Service or the Department of Justice.

(b) A person or prisoner referred to in subsection (1)(c) must be informed by the Board of its recommendations and must confirm that the recommendations have been conveyed to him or her. 5

(c) In cases referred to in subsections (1)(c) and (2)(c) the Board must allow the person or prisoner to submit written representations with regard to the recommendation of the Board, and the Board must submit the representations, together with its report to the court. 10

(4) Where a complainant or relative is entitled in terms of the Criminal Procedure Act, to make representations or wishes to attend a meeting of a Board, the Commissioner must inform the Board in question accordingly and that Board must inform the complainant or relative in writing when and to whom he or she may make representations and when and where a meeting will take place. 15

(5) If, after the Board has approved a prisoner being placed under correctional supervision or be granted day parole or parole, and, prior to the implementation of the decision of the Board, the Case Management Committee reports to the Board that the circumstances of the prisoner have changed to such an extent that it is not advisable to implement the decision, the implementation shall be deferred until the Board authorises it. 20

(6) When the Board cancels correctional supervision or day parole or parole, the matter may be reconsidered by the Board within such period as it deems fit, but it must do so within a period of two years. 25

(7) Despite subsections (1) to (6), the Commissioner may—

(a) place under correctional supervision or day parole or grant parole to a prisoner serving a sentence of less than 12 months imprisonment and prescribe conditions in terms of section 53; or

(b) cancel correctional supervision or day parole or parole and alter the conditions for community corrections applicable to such person. 30

(8) A decision of the Board is final except that the Minister or the Commissioner 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. 35

Correctional Supervision and Parole Review Board

76. (1) The Correctional Supervision and Parole Review Board is selected from the National Council and consists of—

(a) a judge as chairperson;

(b) a director or a deputy director of Public Prosecutions; 40

(c) a member of the Department;

(d) a person with special knowledge of the correctional system; and

(e) two representatives of the public.

(2) The National Council must appoint the members for each meeting of the Correctional Supervision and Parole Review Board. 45

(3) The majority of the members of the Correctional Supervision and Parole Review Board constitute a quorum for a meeting of the Board.

(4) A decision of a majority of the members of the Correctional Supervision and Parole Review Board present is a decision of the Board and in the event of an equality of votes on any matter, the member presiding at the meeting has both a deliberative and a casting vote. 50

Powers of Correctional Supervision and Parole Review Board in respect of cases decided by Correctional Supervision and Parole Board

77. (1) On consideration of a record submitted in terms of section 76 and any submission which the Minister, Commissioner or person 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— 55

(a) confirm the decision; or

(b) substitute its own decision and make any order which the Correctional Supervision and Parole Board ought to have made.

(2) The Correctional Supervision and Parole Review Board must give reasons for its decision, which are to be made available to the Minister, Commissioner, the person and the Correctional Supervision and Parole Board concerned in a specific matter and all other Correctional Supervision and Parole Boards for their information and guidance. 5

Powers of court 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 sentenced to life imprisonment, the court may, subject to the provisions of section 74(6)(b)(iv), grant parole or day parole or prescribe the conditions of community corrections in terms of section 53. 10

(2) If the court refuses to grant parole or day parole in terms of subsection (1), it may make recommendations in respect of treatment, development and support of the prisoner which may contribute to improving the likelihood of future placement on parole or day parole. 15

(3) Where a Correctional Supervision and Parole Board acting in terms of section 74 recommends, in the case of a person sentenced to life imprisonment, that parole or day parole be withdrawn or that the conditions of community corrections imposed on such a person be amended, the court must consider and make a decision upon the recommendation. 20

(4) Where the court refuses or withdraws parole or day parole the matter must be reconsidered by the court within two years.

Correctional supervision or parole on medical grounds

79. Any person serving any sentence in a prison 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 may be considered for placement under correctional supervision or on parole, by the Commissioner, Correctional Supervision and Parole Board or the court, as the case may be, to die a consolatory and dignified death. 25 30

Special remission of sentence for highly meritorious service

80. (1) A Correctional Supervision and Parole Board may, on the recommendation of the Commissioner, grant to a prisoner, except to a prisoner serving a life sentence or a sentence, in terms of section 286A of the Criminal Procedure Act, or to a person subject to community corrections, who has rendered highly meritorious service, special remission of sentence not exceeding two years either unconditionally or subject to such conditions as the Board may determine. 35

(2) Special remission in terms of this section may not result in the prisoner serving less than a stipulated non-parole period or half of his or her original sentence.

Special measures for reduction of prison population 40

81. (1) If the Minister is satisfied that the prison population is reaching such proportions that the safety, human dignity and physical care of the prisoners are being affected materially, the matter must be referred to the National Council.

(2) The National Council may recommend the advancement of the date for placement of any prisoner or group of prisoners under community corrections and the Minister may act accordingly. 45

(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 may fall or the Commissioner in terms of section 76(7).

Powers of President 50

82. (1) Despite any provision to the contrary, the President may—

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

any sentenced prisoner, subject to such conditions as may be recommended by the Correctional Supervision and Parole Board under whose jurisdiction such prisoner may fall or, in the case of a prisoner serving a life sentence, by the court; and

(b) may remit any part of a prisoner's sentence. 5

(2) Nothing in this Act affects the power of the President to pardon or reprieve offenders.

CHAPTER VIII

NATIONAL COUNCIL FOR CORRECTIONAL SERVICES

Structure of National Council 10

- 83.** (1) The Minister must appoint a National Council.
- (2) The National Council consists of—
- (a) two 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) a magistrate of a regional division appointed after consultation with the chairperson of the Magistrates Commission; 15
 - (c) a director or Deputy Director of Public Prosecutions appointed after consultation with the National Director of Public Prosecutions;
 - (d) two members of the Department, of or above the rank of director, appointed after consultation with the Commissioner; 20
 - (e) a member of the South African Police Service, of or above the rank of director, appointed after consultation with the National Commissioner of the South African Police Service;
 - (f) a member of the Department of Welfare, of or above the rank of director, appointed after consultation with the Director-General of Welfare; 25
 - (g) two persons with special knowledge of the correctional system who are not in full-time service of the State; and
 - (h) four or more persons not in the full-time service of the State or members of Parliament appointed as representatives of the public after consultation with the Portfolio Committee on Correctional Services. 30
- (3) (a) Members of the National Council hold office for such period as the Minister determines at the time of their appointment.
- (b) If there are valid grounds for doing so, the Minister may terminate the appointment of a member.
- (4) The Minister must appoint one of the judges referred to in subsection (2) (a) as chairperson and the other as vice-chairperson of the National Council. 35
- (5) The majority of members of the National Council constitute a quorum for a meeting of the Council.
- (6) A decision of majority of the members of the National Council present shall be a decision of the Council and in the event of an equality of votes, the member presiding at the meeting shall have both a deliberative and the casting vote. 40
- (7) A member of the National Council who is not in the service of the State may receive such allowances as may be determined by the Commissioner in consultation with the Minister of State Expenditure.

Functions and duties of National Council 45

- 84.** (1) The primary function of the National Council is to advise, at the request of the Minister or on its own accord, in developing policy in regard to the correctional system and the sentencing process.
- (2) The Minister must refer draft legislation and major proposed policy developments regarding the correctional system to the National Council for its comments and advice. 50
- (3) The National Council must fulfil the functions and duties ascribed to the National Advisory Council by section 65(5) of the Correctional Services Act, 1959 (Act No. 8 of 1959), relating to prisoners serving life sentences and still to be considered for parole in terms of the said Act. 55

- (4) The Commissioner must provide the necessary information and resources to enable the National Council to perform its primary function.
- (5) The National Council may examine any aspect of the correctional system and refer any appropriate matter to the Inspecting Judge.
- (6) The National Council must fulfil any other function ascribed to it in this Act. 5

CHAPTER IX

THE JUDICIAL INSPECTORATE

Establishment of Judicial Inspectorate

- 85.** (1) The Judicial Inspectorate of prisons is an independent office under the control of the Inspecting Judge. 10
- (2) The object of the Judicial Inspectorate is to facilitate the inspection of prisons in order that the Inspecting Judge may report on the treatment of prisoners in prisons and on conditions and any corrupt or dishonest practices in prisons.

Inspecting Judge

- 86.** (1) The President must appoint the Inspecting Judge who must be— 15
- (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, 1989 (Act No. 88 of 1989); or
- (b) a judge who has been discharged from active service in terms of section 3 of the said Act. 20
- (2) An Inspecting 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 requests to be released to resume judicial duties.
- (3) The Inspecting Judge continues to receive the salary, allowances, benefits and privileges attached to the office of a judge. 25

Appointment of Assistants

- 87.** (1) From time to time the Inspecting Judge may, after consultation with the Commissioner, appoint one or more person or persons with a legal, medical or penological background as an Assistant or Assistants to assist in the performance of his or her duties. 30
- (2) Assistants are appointed for a fixed period or until the completion of a specific task.
- (3) Assistants have the same powers, functions and duties as the Inspecting Judge, but are under the authority and control of the Inspecting Judge.
- (4) The salary and conditions of service of Assistants must be determined by the Inspecting Judge after consultation with the Commissioner and in consultation with the Director-General of the Department of Public Service and Administration. 35

Conditions of service of retired judges

- 88.** (1) Should the Inspecting Judge or an Assistant be a judge retired from active service in terms of section 3(1)(a) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), any period of service as Inspecting Judge or an Assistant shall be reckoned as service performed in terms of section 7(1) of the said Act and the provisions of subsections (3) and (6) thereof shall apply to such appointment. 40
- (2) Should the appointee be a judge retired from active service in terms of section 3(1)(b), (c) or (d) of the said Act, the remuneration payable to such appointee shall be determined by the Minister of Justice or agreed with the prospective appointee. 45

Inspectors and staff

- 89.** (1) The staff complement of the Judicial Inspectorate must be determined by the Inspecting Judge in consultation with the Commissioner. 50

(2) The Inspecting Judge must appoint within this complement inspectors and such other staff, including a secretary, as are required.

(3) Such employees, if not correctional officials, are deemed for administrative purposes to be correctional officials seconded to the Judicial Inspectorate, but are under the control and authority of the Inspecting Judge. 5

(4) The salary and conditions of service of any such employee must be determined by the Inspecting Judge in accordance with the Public Service Act, and after consultation with the Director-General of the Department of Public Service and Administration.

Powers, functions and duties of Inspecting Judge

90. (1) The Inspecting Judge inspects or arranges for the inspection of prisons in order to report on the treatment of prisoners in prisons and on conditions and any corrupt or dishonest practices in prisons. 10

(2) The Inspecting Judge may only receive and deal with the complaints submitted by the National Council, the Minister, the Commissioner, a Visitors' Committee and, in cases of urgency, an Independent Prison Visitor and may of his or her own volition deal with any complaint. 15

(3) The Inspecting Judge must submit a report on each inspection to the Minister.

(4)(a) The Inspecting Judge must submit an annual report to the President and the Minister.

(b) The report must be tabled in Parliament by the Minister. 20

(5) For the purpose of conducting an investigation, the Inspecting Judge may make any enquiry and hold hearings.

(6) At a hearing, sections 3, 4 and 5 of the Commissions Act, 1947 (Act No. 8 of 1947), apply as if the Inspecting Judge and the secretary of the Judicial Inspectorate were the chairperson and secretary of a Commission, respectively. 25

(7) The Inspecting Judge may delegate any of his or her functions to inspectors, except where a hearing is to be conducted by the Inspecting Judge.

(8) After consultation with the Director-General of the Department of Public Service and Administration, the Inspecting Judge may appoint persons with appropriate qualifications from outside the Public Service, to assist in any specialised aspect of inspection or investigation, at a rate of remuneration determined in accordance with the Public Service Act. 30

(9) The Inspecting Judge may make such rules, not inconsistent with this Act, as are considered necessary or expedient for the efficient functioning of the Judicial Inspectorate. 35

(10) The Inspecting Judge must perform any other function ascribed to him or her in this Act.

Expenses of Judicial Inspectorate

91. The Department is responsible for all expenses of the Judicial Inspectorate.

CHAPTER X 40

INDEPENDENT PRISON VISITORS

Appointment of Independent Prison Visitors

92. (1) The Inspecting Judge must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an Independent Prison Visitor for any prison or prisons. 45

(2) An Independent Prison Visitor holds office for such period as the Inspecting Judge may determine at the time of such appointment.

(3) The Inspecting Judge may at any time, if valid grounds exist, suspend or terminate the service of an Independent Prison Visitor.

Powers, functions and duties of Independent Prison Visitors

- 93.** (1) An Independent Prison Visitor shall deal with the complaints of prisoners by—
- (a) regular visits;
 - (b) interviewing prisoners in private; 5
 - (c) recording complaints in an official diary and monitoring the manner in which they have been dealt with; and
 - (d) discussing complaints with the Head of Prison, or the relevant subordinate correctional official, with a view to resolving the issues internally.
- (2) An Independent Prison Visitor, in the exercise and performance of such powers, functions and duties, must be given access to any part of the prison and to any document or record. 10
- (3) The Head of Prison must assist an Independent Prison Visitor in the performance of the assigned powers, functions and duties.
- (4) Should the Head of Prison refuse any request from an Independent Prison Visitor relating to the functions and duties of such a Visitor, the dispute must be referred to the Inspecting Judge, whose decision will be final. 15
- (5) An Independent Prison Visitor must report any unresolved complaint to the Visitors' Committee and may, in cases of urgency or in the absence of such a committee, refer such complaint to the Inspecting Judge. 20
- (6) The Inspecting Judge may make rules concerning, or on the appointment of an Independent Prison Visitor, specify, the number of visits to be made to the prison over a stated period of time and the minimum duration of a visit, or any other aspect of the work of an Independent Prison Visitor.
- (7) Each Independent Prison Visitor must submit a quarterly report to the Inspecting Judge, which shall include the duration of visits, the number and nature of complaints dealt with, and the number and nature of the complaints referred to the relevant Visitors' Committee. 25
- (8) The Minister may, on the recommendation of the Department of Public Service and Administration and with the concurrence of the Minister of Finance, determine remuneration and allowances to be paid to the Independent Prison Visitors who are not in the full-time service of the State. 30

Visitors' Committee

- 94.** (1) Where appropriate, the Inspecting Judge may establish a Visitors' Committee for a particular area consisting of the Independent Prison Visitors appointed to prisons in that area. 35
- (2) The Committee must meet at least quarterly.
- (3) The functions of the Committee are—
- (a) to consider unresolved complaints with a view to their resolution;
 - (b) to submit to the Inspecting Judge those complaints which the Committee cannot resolve; 40
 - (c) to organise a schedule of visits;
 - (d) to extend and promote the community's interest and involvement in correctional matters; and
 - (e) to submit minutes of meetings to the Inspecting Judge. 45

CHAPTER XI

INTERNAL SERVICE EVALUATION

Objectives and functions of internal service evaluation

- 95.** (1) The Commissioner must conduct an internal service evaluation to promote the economical and efficient operation of the Department and to ensure that the objectives and principles of this Act are met. 50
- (2) Such a service evaluation must assess, at regular intervals, the effectiveness of

internal control at national and provincial level, individual prisons including joint venture prisons and community corrections, by—

- (a) determining whether the departmental operations are conducted effectively;
- (b) reviewing the reliability of financial, operational and management information; 5
- (c) ascertaining whether departmental assets and interests are controlled and safeguarded from losses;
- (d) assessing the effective utilisation of human and other resources;
- (e) monitoring whether established objectives for programmes are being achieved; and 10
- (f) suggesting measures to combat theft, fraud, corruption and any other dishonest practices.

(3) The Commissioner must establish appropriate mechanisms for internal service evaluation.

(4) The Commissioner must include in the annual report to Parliament, an account of the process and results of the internal service evaluation. 15

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

CHAPTER XII

OFFICIALS OF THE DEPARTMENT 20

Powers, functions and duties of correctional officials

96. (1) The Department and every correctional official in its service must strive to fulfil the purpose of this Act and to that end every correctional official must perform his or her duties under this Act.

(2) 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. 25

(3) Subject to the provisions of this Act and the provisions of the Labour Relations Act and having regard to the operational requirements of the Department, the Commissioner shall determine the qualifications for appointment and promotion and decide on the appointment, promotion and transfer of correctional officials, but— 30

- (a) the appointment or promotion of a correctional official to or above the post level of director takes place in consultation with the Minister;
- (b) all persons who qualify for appointment, promotion or transfer must be considered; 35
- (c) the assessment of persons shall be based on training, relevant skills, competence, and the need to redress the imbalances of the past in order to achieve a Department broadly representative of the South African population, including representation according to race, gender and disability;
- (d) despite the provisions of paragraph (c), the Commissioner may, subject to the prescribed conditions, approve the appointment, transfer or promotion of persons to promote the basic values and principles referred to in section 195(1) of the Constitution; and 40
- (e) for the purposes of promotion or transfer, the Commissioner may exempt a correctional official who is exceptionally skilled, has special training, renders exceptional service, or has successfully completed a prescribed departmental training course, from the requirements of the Code of Remuneration. 45

(4) (a) The Commissioner may appoint unpaid voluntary workers who are not employees of the Department.

(b) Such workers have the same duties and are subject to the same restrictions as correctional officials but may only exercise the powers of correctional officials to the extent determined by the Commissioner. 50

(5) The retirement age of correctional officials contained in the Correctional Services Act, 1959 (Act No. 8 of 1959), remains in force unless amended in the Bargaining

Council for the Department of Correctional Services in terms of the Labour Relations Act.

Delegation of powers

97. (1) The Minister may delegate any of the powers vested in him or her by this Act to the Commissioner, except the powers contemplated in section 134 of this Act. 5

(2) The Commissioner may delegate any of the powers vested in him or her by this Act or any other Act to any correctional official of the Department or other person employed by the Department and may delegate any of the delegated powers in terms of subsection (1) to a correctional official of a post level of deputy director or higher.

(3) Any delegation in terms of this section takes effect on date of publication in the *Gazette*. 10

Professionals

98. Any professional correctional official appointed by the Commissioner to work directly with prisoners and persons subject to community corrections retains professional independence. 15

CHAPTER XIII

GENERAL POWERS OF ENFORCEMENT

Access to prisons

99. (1) A judge of the Constitutional Court, Supreme Court of Appeal or High Court, and a magistrate within his or her area of jurisdiction, may visit a prison at any time. 20

(2) A judge and a magistrate referred to in subsection (1) must be allowed access to any part of a prison and any documentary record, and may interview any prisoner and bring any matter to the attention of the Commissioner, the Minister, the National Council or the Inspecting Judge.

(3) (a) Members of the parliamentary Portfolio Committee on Correctional Services and the relevant committee of the National Council of Provinces and members of the National Council may visit any prison at any time. 25

(b) Members referred to in paragraph (a) must be allowed access to any part of a prison and any documentary record.

(4) A Sheriff or Deputy Sheriff must be allowed access to any prisoner when this is necessary in the performance of official duties. 30

(5) The Commissioner may permit any person other than those mentioned in subsections (1) to (4) to visit a prisoner, a prison or any specific section of a prison for any special or general purpose.

Arrest 35

100. (1) In addition to the powers of arrest which a correctional official has as a peace officer in terms of the Criminal Procedure Act, any correctional official may arrest without a warrant any person whom he or she reasonably suspects of having committed an offence defined in this Act.

(2) The Criminal Procedure Act, shall apply to any exercise of powers in terms of subsection (1) as if the correctional official who was performing an arrest was acting as a peace officer in terms of section 40 of the Criminal Procedure Act. 40

Entry, search and seizure

101. (1) In addition to the powers of a correctional official to search prisoners, their cells and their property and to seize articles in terms of section 27, a correctional official also has the power to enter any premises, to search without warrant any other person or place and seize any article when this is reasonably necessary for— 45

- (a) maintaining the safe custody of a prisoner, the security of a prison and controlling access of persons to and permissibility of goods in a prison;
 - (b) carrying out any sentence or order in terms of which a person is subject to community corrections; or
 - (c) preventing, or gathering evidence of, the commission of any offence under this Act. 5
- (2) Despite the provisions of subsection (1)—
- (a) a correctional official may not search another correctional official or seize his or her property without his or her consent or being authorised to do so by the Commissioner but a general authorisation to search other correctional officials may be granted to a correctional official who is required to act in order to control access to or maintain secure custody within a prison; and 10
 - (b) action cannot be taken in terms of subsection (1)(c) 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) without a warrant when he or she on reasonable grounds believes that— 15
 - (i) a warrant will be issued authorising action in terms of subsection (1)(c); and
 - (ii) the delay in obtaining such a warrant would defeat the object of the search. 20
- (3) (a) The provisions of section 21 of the Criminal Procedure Act, relating to the issue of a warrant to a police official apply, with the necessary changes, to a correctional official acting in terms of this section.
- (b) The provisions of section 27 of the Criminal Procedure Act, relating to resistance to entry or search by a police official apply, with the necessary changes, to a correctional official acting in terms of this section. 25
- (c) The provisions of section 29 of the Criminal Procedure Act, relating to the manner in which a search must be conducted by a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

Use of force 30

- 102.** (1) In addition to the use of force authorised in terms of any other provision of this or any other Act, any correctional official is authorised to use force against any person who assists an escapee or who disrupts or threatens to disrupt the operation of a prison or the enforcement of the conditions of community corrections.
- (2) The use of force is authorised to achieve the objectives in subsection (1) subject to the following restrictions: 35
- (a) that no other means are available and that the minimum degree of force proportionate to the said objectives is used; and
 - (b) force may be used only when authorised by the Head of Prison or the Head of Community Corrections unless a correctional official reasonably believes that the use of force is immediately necessary and that the Head of Prison or the Head of Community Corrections would have permitted the use of force. 40
- (3) In the case of the use of force without prior recourse the correctional official must report such action as soon as reasonably possible to the Head of Prison or the Head of Community Corrections. 45

CHAPTER XIV

JOINT VENTURE PRISONS

Contracts for joint venture prisons

- 103.** (1) The Minister may, subject to any law governing the award of contracts by the State, with the concurrence of the Minister of Finance and the Minister of Public Works, 50

enter into a contract with any party to design, construct, finance and operate any prison or part of a prison established or to be established in terms of section 5.

(2) The contract period in respect of the operation of a prison may not be for more than 25 years.

Duties and restrictions applying to Contractors 5

104. (1) Subject to limitations in this Act, the Contractor must contribute to maintaining and protecting a just, peaceful and safe society by—

- (a) enforcing the sentences of the courts in the manner prescribed by this Act;
- (b) detaining all prisoners in safe custody whilst ensuring their human dignity; and
- (c) by promoting the social responsibility and the human development of all prisoners. 10

(2) Within 21 days after having been notified of the awarding of such contract, the Contractor must apply to the Essential Services Committee established under section 70 of the Labour Relations Act, to have the whole of the service to be provided under the contract declared as essential service. 15

(3) The Contractor may make prison rules only with the prior permission of the Commissioner.

(4) The Contractor may not—

- (a) take disciplinary measures against prisoners or impose punishment on them; 20
- (b) be involved in the determination or the computation of sentences;
- (c) determine at which prison a prisoner should be detained;
- (d) decide upon the placement or release of a prisoner;
- (e) be involved in the implementation of community corrections;
- (f) grant temporary leave; and 25
- (g) be entitled to subcontract, cede, assign or delegate any of the functions under the contract unless authorised to do so under the contract.

Appointment of Controller

105. The Commissioner must appoint a Controller for every joint venture prison.

Powers, functions and duties of Controller 30

106. (1) The Controller must monitor the daily operation of the joint venture prison and report to the Commissioner.

(2) The Controller may order the Director and custody officials in the employ of the contractor to—

- (a) conduct any search contemplated in section 27(1)(b), (c) or (f); 35
- (b) detain separately a prisoner or prisoners of a specific class in the circumstances contemplated in section 30;
- (c) apply approved mechanical means of restraint contemplated in section 31 to a prisoner detained in a single cell for a period not exceeding 30 days;
- (d) use force contemplated in section 32; 40
- (e) use non-lethal incapacitating devices contemplated in section 33;
- (f) use firearms contemplated in section 34; and
- (g) use other weapons contemplated in section 35.

Appointment of Director

107. (1) With the prior approval of the Commissioner, the Contractor must appoint a Director to serve as the head of the joint venture prison. 45

(2) The Director is a custodial official and subject to certification contemplated in section 110.

Powers, functions and duties of Director

- 108.** (1) The Director of every joint venture prison—
- (a) is responsible for its operation and has the same powers, duties and functions as the Head of Prison, subject to the restrictions contained in this Act and the contract; 5
 - (b) for the purposes of part C of Chapter III of this Act and Section 340 of the Criminal Procedure Act, has the functions of the Head of Prison;
 - (c) in case of urgency the Director may authorise the temporary application of the measures contemplated in section 107(2) if he or she reasonably believes that delay in obtaining such authorisation would defeat the object of that section; 10
and
 - (d) must report as soon as possible to the Controller on any such action.

Appointment of custody officials

- 109.** (1) The Contractor must appoint custody officials to perform custodial duties.
- (2) No employee of the Contractor may perform custodial duties unless he or she has been certified as a custody official by the Commissioner. 15
- (3) A custody official may be certified by the Commissioner, only if the standards of qualifications, prescribed by regulation are satisfied.
- (4) The Commissioner must keep a register, with—
- (a) the full names and identity number of each certified custody official; 20
 - (b) particulars of each custody official whose certification has either been suspended or revoked; and
 - (c) such other particulars as required by the Commissioner.
- (5) (a) The certification of any custody official may be suspended by the Controller—
- (i) pending trial for any offence; 25
 - (ii) pending any disciplinary hearing into a charge of misconduct arising from, or in connection with, the performance of his or her duties; or
 - (iii) pending any investigation into his or her fitness or competency to perform custodial duties.
- (b) The Controller must notify the Commissioner of the decision to suspend the certification of a custody official. 30
- (6) The Commissioner may, after a custody official has been suspended and been given the opportunity to make representations, revoke the suspension or the certification.

Powers and duties of custody officials 35

110. A custody official has the powers and duties of a correctional official laid down by this Act, except in regard to matters referred to in section 105(4) or restricted elsewhere in the Act, the regulations or in the contract.

Preservation of confidentiality

- 111.** (1) Every employee of the Contractor and in the case of subcontractor, any employee of a subcontractor, must preserve confidentiality in respect of any information acquired in the course of employment unless the employee concerned is—
- (a) reasonably obliged to disclose any such information in the course of duty;
 - (b) authorised by the Commissioner to make such disclosure; or
 - (c) obliged by law or a court of law to do so. 45
- (2) A Contractor or subcontractor must at the time of employment of an employee draw attention to this requirement.
- (3) Any person who contravenes the provisions of subsection (1) or (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months or both. 50

Commissioner's powers in an emergency at joint venture prisons

- 112.** (1) (a) If, in the opinion of the Commissioner in consultation with the Minister—
- (i) the Director has lost, or is likely to lose, effective control of a joint venture prison or any part of it; and
 - (ii) it is necessary, in the interest of safety and security to take control of such prison or part of it,
- he or she may appoint a Temporary Manager to act as the head of that prison and may replace custody officials with correctional officials to the extent necessary.
- (b) The appointment referred to in paragraph (a) starts at the time specified in the Temporary Manager's written notice of appointment and ends on written notice to that effect.
- (c) During the period of appointment referred to in paragraph (b)—
- (i) the Temporary Manager performs the functions of the Director; and
 - (ii) the Contractor and any subcontractor, must do all that is possible to facilitate the performance by the Temporary Manager of those functions.
- (d) As soon as practicable after making or terminating the appointment of a Temporary Manager, the Commissioner must give notice of such action to the Contractor, the Director and the Controller.

CHAPTER XV**OFFENCES****Interference with correctional or custody officials**

- 113.** Any person who—
- (a) resists, hinders or obstructs a correctional or custody official in the performance of his or her duties;
 - (b) in order to compel a correctional or custody official to do or not to do any act in the performance of his or her duties, or threatens or suggests the use of violence against, or restraint upon such person or any of his or her relatives or dependants, or threatens to damage the property of any such person or of the Department or the Contractor;
 - (c) assists, conspires with, induces any correctional or custody official not to perform his or her duties or to do any act contrary to it;
 - (d) participates, assists in or incites the commission of any act whereby any lawful order given to a correctional or custody official may be evaded; or
 - (e) incites or induces a prisoner to contravene a lawful rule, order, a regulation or a provision of this Act,
- is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding six years or to such imprisonment without the option of a fine or both.

Interference with community corrections conditions

- 114.** Any person who assists, conspires with or incites a person subject to community corrections to contravene a condition is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to such imprisonment without the option of a fine or both.

Aiding escapes

- 115.** Any person who—

- (a) conspires with or incites any prisoner to escape;
- (b) assists a prisoner in escaping or attempting to escape from any prison or from any place where he or she may be in custody;
- (c) for the purpose of facilitating the escape of any prisoner, supplies or agrees to supply or assists, incites or induces any other person to supply a prisoner with any document, disguise or any other article; 5
- (d) without lawful authority relays any document, or article or causes it to be relayed into or out of a prison or a place where prisoners may be in custody; or
- (e) harbours or conceals or assists in harbouring or concealing an escaped prisoner, 10

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to such imprisonment without the option of a fine or both.

Unauthorised removal of prisoner from prison

116. Any person who without lawful authority removes a prisoner or allows him or her to leave the prison, or place where such prisoner is in custody, is guilty of an offence and liable on conviction to a fine, or in default of payment, to imprisonment for a period not exceeding eight years or to imprisonment without the option of a fine or both. 15

Escaping and absconding

- 117.** Any prisoner who— 20
- (a) escapes from custody;
 - (b) conspires with any person to procure his or her own escape or that of another prisoner or who assists or incites any prisoner to escape from custody;
 - (c) is in possession of any document or article with intent to procure his or her own escape or that of another prisoner; 25
 - (d) in any manner collaborates with a correctional or custody official or any other person, whether under the supervision of such correctional or custody official or person or not, to leave the prison without lawful authority or under false pretences; or
 - (e) is subject to community corrections and where he or she absconds and thereby avoids being monitored, 30

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding ten years or to imprisonment without the option of a fine or both.

Giving or receiving money or other consideration

- 118.** (1) No correctional or custody official and no other person acting for or employed by him or her may directly or indirectly— 35
- (a) sell, supply or derive any benefit or advantage from the sale or supply of any article to or for the use of any prisoner or prison; or
 - (b) have an interest in any contract or agreement for the sale or supply of any such article. 40
- (2) No correctional official may directly or indirectly—
- (a) have any pecuniary interest in the purchase of any supplies for the use of the Department or receive any discounts, gifts or other consideration from contractors for or sellers of such supplies;
 - (b) except for the purposes of the execution of official duties, have any pecuniary dealing with a prisoner or with any other person relating to a prisoner; or 45
 - (c) on behalf of any prisoner, have any unauthorised communication with any person.

(3) Except for the payment of fines or for goods purchased in accordance with regulations made in terms of this Act, no money or other consideration shall, on any pretext whatsoever, be payable, paid, given or promised by or on behalf of any prisoner, either before, during or after serving a prison sentence or being placed under community corrections to any correctional or custody official or other person in the service of the Department or in the employ of a Contractor. 5

(4) Except as envisaged in subsection (3), no correctional or custody official or other person in the service of the Department or in the employ of a Contractor may enter into any business transaction with a prisoner or pay, receive or demand any money or other consideration or undertake any service instead of receiving money or other consideration. 10

(5) Any person who contravenes any provision of this section is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding two years, or to such imprisonment without the option of a fine, or both.

Supplying certain articles to prisoners 15

119. (1) No person may without lawful authority—

- (a) supply, convey or cause to be supplied or conveyed to any prisoner, or hide or place for his or her use any document, intoxicating liquor, dagga, drug, opiate, money, or any other article;
- (b) bring or introduce into any prison, or place where prisoners may be in custody, any document, intoxicating liquor, dagga, drug, opiate, money, or any other article to be sold or used in the prison; or 20
- (c) bring out of any prison, or convey from any prisoner any document or other article.

(2) No correctional or custody official or other person in the service of the Department or in the employ of a Contractor may without lawful authority allow or participate in the commission of any act prohibited in subsection (1). 25

(3) Any person who contravenes any provision of this section commits an offence and is liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding four years, or to such imprisonment without the option of a fine or both. 30

Prisoners receiving or sending articles

120. Any prisoner who directly or indirectly and without lawful authority—

- (a) gives or sends, or promises to give or send, any money or any other article to any correctional or custody official or any other person in the service of the Department or in the employ of a Contractor as a reward for any service rendered or to be rendered or on his or her behalf within or outside any prison; 35
- (b) enters into any business transaction with any correctional or custody official or any other person in the service of the Department or in the employ of a Contractor; 40
- (c) receives, for own use or on behalf of any other prisoner or person any document, intoxicating liquor, dagga, drug, opiate, money or any other article;
- (d) arranges with any correctional or custody official or any other person for any document, intoxicating liquor, dagga, drug, opiate, money or any other article to be sent or conveyed into any prison for a prisoner's own use or on his or her behalf; or 45
- (e) hands to any correctional or custody official or any other person any document or other article for the purpose of being hidden or placed by such person for eventual use by or delivery to a prisoner or other person,

is guilty of an offence and liable on conviction to a fine, or in default of payment, to imprisonment for a period not exceeding four years or to such imprisonment without the option of a fine or both. 50

Selling or supplying articles to prisoners

- 121.** (1) No correctional official or custody official and no person acting for or employed by him or her shall directly or indirectly—
- (a) sell or supply or receive, any benefit or advantage from the sale or supply of any article to or for the use of any prisoner or for the use of the Department; 5
 - (b) have any interest in any contract or agreement for the sale or supply of any such article;
 - (c) have any pecuniary interest in the purchase of any supplies for the use of the Department or receive any discounts, gifts or other consideration from contractors for or sellers of such supplies; 10
 - (d) except for the purposes of the execution of his or her official duties, have any pecuniary dealing with a prisoner or, with regard to a prisoner, with any other person; or
 - (e) on behalf of any prisoner, have any unauthorised communication with any person. 15
- (2) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding one year, or to such imprisonment without the option of a fine, or both such fine and such imprisonment

Unauthorised entry at prisons and communication or interference with prisoners 20

- 122.** Any person who without lawful authority—
- (a) enters any prison or fails to depart upon being ordered so to do by any correctional or custody official or member of the South African Police Service;
 - (b) communicates with any prisoner; 25
 - (c) in any manner interferes with any prisoner or group of prisoners; or
 - (d) has in his or her possession or publishes a sketch, diagram or photograph of a prison or part of a prison or any security system relating to the detention of prisoners in order to undermine the security or secure detention of the prisoners, 30
- is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding four years or to such imprisonment without the option of a fine or both.

Prohibited publication

- 123.** (1) Any person who publishes or causes to be published any account of— 35
- (a) an offence for which a prisoner is serving a sentence; or
 - (b) a prisoner's imprisonment.
- is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding four years or to such imprisonment without the option of a fine or both. 40
- (2) The Commissioner may allow a publication contemplated in subsection (1) if it is in the interests of the administration of justice.
- (3) Any person who is not satisfied with the decision of the Commissioner may within 10 days refer the matter to the Inspecting Judge. The Inspecting Judge must confirm or set aside the decision. 45
- (4) A court convicting a person of contravening subsection (1) may declare any remuneration received by or on behalf of the person forfeit to the State.

Unauthorised wearing of departmental dress or insignia

- 124.** Any unauthorised person who wears or uses the departmental dress, distinctive badge or insignia of the Department or of a custody official or anything deceptively 50

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

Masquerading as an official

125. Any person masquerading as a correctional or custody official is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or both. 5

False representations

126. Any person who obtains an appointment as a correctional official or as custody official by means of any false representation commits an offence and is liable on conviction to a fine, or in default of payment, to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine or both. 10

Unauthorised disclosure of information

127. Any correctional or custody official or any person in the service of the Department or in the employ of the Contractor or a subcontractor who unlawfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure may prejudicially affect the exercise or the performance by the Department of its powers or functions under this Act, or that of a Contractor in terms of the contract, is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or both. 15
20

Unauthorised access to or modification of computer material

- 128.** (1) For the purposes of this section—
- (a) “access to a computer” includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Department or a custody official; 25
 - (b) “contents of any computer” includes the physical components of any computer as well as any program or data contained in or stored as envisaged in paragraph (a); 30
 - (c) “modifies” includes a temporary or permanent modification;
 - (d) “perform a function on a computer” includes copying or downloading; and
 - (e) “unauthorised access” includes access by a person who is authorised to use the computer but unauthorised to gain access to a certain program or to certain data held in such computer or who is at the relevant time temporarily unauthorised to gain access to such computer, program or data. 35

(2) Any person who intentionally gains unauthorised access to any computer or to any program or data held in such a computer belonging to or under the control of the Department or Contractor, or in a computer to which correctional or custody officials have access in that capacity, is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or both. 40

(3) Any unauthorised person who performs a function on a computer belonging to or under the control of the Department or a Contractor or to which correctional or custody 45

officials have access, is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding two years, or to such imprisonment without the option of a fine or both.

(4) Any person who intentionally modifies the contents of any computer belonging to or under the control of the Department or a Contractor or to which only correctional or custody officials have access in order to impair the operation of any computer or its operating or the reliability of data held in it or to prevent or hinder access to any program or data held in any computer, is guilty of an offence and liable on conviction to a fine or, in default of payment, to imprisonment for a period not exceeding five years or to such imprisonment without the option of a fine, or both.

(5) The courts of the Republic of South Africa have jurisdiction to try any person under this section whether such an offence was committed outside the Republic if—

- (a) the accused was in the Republic;
- (b) the computer concerned was in the Republic; or
- (c) the accused was a South African citizen.

Indirect complicity

129. Without derogating from any specific provisions in this regard any person who assists, conspires with or incites another to contravene any provision of this Chapter, commits an offence and is liable on conviction to the punishment stipulated in such provision.

CHAPTER XVI

GENERAL

Limitation on legal proceedings

130. (1) No legal proceedings may be instituted against the Department, State or any body or person in respect of any alleged act performed in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, unless such proceedings are instituted within 12 calendar months of the date upon which the claimant became aware of the alleged act or omission, or after the date upon which the claimant might be reasonably expected to have become aware, whichever is the earlier date.

(2) No proceedings contemplated in the subsection (1) may be instituted before the expiry of at least one calendar month after written notification of the intention to institute such proceedings, has been served on the defendant giving particulars of the alleged act or omission.

(3) If any notice contemplated in subsection (2) is given to the Commissioner or to the Provincial Commissioner of the province in which the cause of action arose, it serves as a notification to the defendant.

(4) Any process by which any proceedings contemplated in subsection (1) are instituted and in which the Minister is the defendant or respondent may be served on the Commissioner or Provincial Commissioner.

(5) Subsections (1) and (2) do not preclude a court of law from dispensing with the requirements or prohibitions contained in those subsections where the interests of justice so require.

Liability for patrimonial loss arising from performance of service by persons under community corrections

131. In the event of a person serving community corrections being liable in delict for an act or omission in the course of such service, the damages sustained may be recovered from the State.

Establishment, management and exemption from certain moneys of canteens at prisons

132. (1) Canteens for the exclusive use or benefit of correctional officials, the families

of such officials and other persons or categories of persons prescribed by regulation, may be established and conducted on such conditions and in such manner as may be prescribed by regulation.

(2) No licence fees or fee, leviable by law, is payable by any person under any law or by-law in respect of any canteen established in terms of subsection (1). 5

(3) The production of an official document bearing the signature of the Minister or of a person authorised by him or her to sign any such document and indicating that he or she has certified the canteen, shall be conclusive proof that it is a canteen as contemplated in subsection (1).

(4) For the purposes of this section “canteen” includes— 10

(a) any mess for officials of the Department or any institution of the Department or any premises temporarily or permanently used for providing recreation, refreshment or necessaries for the exclusive use or benefit of officials of the Department, the families of such officials and other persons or categories of persons prescribed by regulation; 15

(b) any canteen which before the date of commencement of this Act was certified by the Minister or any person authorised by him or her as contemplated in subsection (3), shall be deemed to be a canteen established on the conditions and in the manner referred to in subsection (1).

Regulations 20

133. (1) The Minister may make regulations not inconsistent with this Act as to—

(a) the safe custody of prisoners and the maintenance of good order, discipline and security in prisons;

(b) the provisions of a register and the procedure for recording in it information regarding a prisoner’s identification, date and hour of admission and release, the authority for doing so, and the prisoner’s personal and criminal record; 25

(c) the procedure to be followed on admission for the medical examination of a prisoner;

(d) the assessment of a sentenced prisoner;

(e) the receipt and safe custody of money or other articles belonging to a prisoner by correctional officials at prisons and the fate of such possessions should a prisoner escape, die or fail to claim them; 30

(f) accommodating prisoners in cells in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions;

(g) the classification of categories of prisoners based upon age, gender, health and security risk considerations; 35

(h) the location, transfer, temporary leave, placement and release of prisoners;

(i) the diet of prisoners with special provision for the nutritional requirements of children, pregnant women and any other category of prisoners whose physical condition requires a prescribed diet; 40

(j) the clothing and bedding to be supplied to and worn by prisoners;

(k) the standards of hygiene to be maintained by prisoners in reference to their daily exercise and health care;

(l) visits to prisons by relatives of prisoners and others and arrangements for a prisoner to consult with a legal practitioner; 45

(m) providing money, food, clothing, a travelling allowance or method of transport for prisoners prior to their placement for release;

(n) the procedure to be followed on the death of a prisoner;

(o) informing the next of kin of death of a prisoner and the conveyance and disposal of the body; 50

(p) financial and other support of institutions, social agencies and individuals promoting the social responsibility and human development of prisoners;

- (q) the admission to a prison of persons other than correctional officials, custody officials or prisoners;
 - (r) the manner in which a prisoner may make requests and complaints, and how they are to be dealt with by correctional officials or custody officials;
 - (s) conducting disciplinary proceedings against a prisoner and the implementation and enforcement of any penalty imposed; 5
 - (t) the procedure to be followed by a prisoner in exercising a right of appeal, review or pardon or in making any or further representations or submissions;
 - (u) those amenities susceptible to restriction as a penalty for disciplinary infringements and the amenities allowed to unsentenced prisoners; 10
 - (v) the searching of persons upon entering or when inside a prison;
 - (w) the examination, confiscation and disposal of any document or other article found in any prison;
 - (x) the permissible non-lethal incapacitating devices and the manner in which they may be used; 15
 - (y) the use of weapons other than fire-arms and non-lethal incapacitating devices;
 - (z) the reporting procedures when force is used;
 - (aa) providing and equipping workshops and other facilities for the training of and the use by prisoners and the supply of material for that purpose;
 - (bb) the working hours, gratuity and conditions relating to work done by prisoners; 20
 - (cc) the composition of Case Management Committees and the designation of the prisons they are to serve;
 - (dd) the obtaining and recording of information relating to persons subject to community corrections;
 - (ee) the composition and supervision of a community corrections office; 25
 - (ff) the appointment and conditions of service of correctional officials and voluntary workers and all personnel matters pertaining to them;
 - (gg) the establishment, management and control of a scheme to provide for medical treatment of correctional officials and other persons entitled thereto;
 - (hh) the establishment, management and control of a private fund for the purposes of developing and supporting correctional officials or other persons financially or otherwise; 30
 - (ii) the powers, duties and functions of correctional officials, temporary correctional officials, unpaid voluntary workers, Directors of joint venture prisons and custody officials and, in general, the operation of a prison; and 35
 - (jj) generally, all matters considered necessary or expedient for attaining the purpose of this Act.
- (2) The Minister may also make regulations with regard to the powers of the Commissioner to issue orders for the Department which are not inconsistent with this Act and personnel-related provisions and which must be obeyed by all correctional officials and other persons in the service of the Department to whom such orders apply. 40
- (3) A regulation may provide penalties for its contravention or failure to comply with it and other penalties in the case of any subsequent contravention or non-compliance. Such penalties may consist of a fine or imprisonment for a period not exceeding six months, or such imprisonment without the option of a fine, or both such fine and such imprisonment. 45
- (4) If the Minister considers that a regulation is not suited to the circumstances of a particular prison he or she may modify its application to such prison.
- (5) The Minister must refer proposed regulations to the Portfolio Committee on Correctional Services. 50

State bound by Act

134. This Act binds the State.

Repeal of laws

135. The Acts set out in the Schedule are hereby repealed or amended to the extent set out in the third column of the Schedule.

Short title and commencement

136. (1) This Act is called the Correctional Services Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 5

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

SCHEDULE

LAWS AMENDED BY SECTION 136

No. and year of law	Short title	Extent of repeal or amendment
Act 8 of 1959 Act 51 of 1977	Correctional Services Act Criminal Procedure Act	<p>The repeal of the whole.</p> <p>1. The amendment of section 1 by the substitution for the definition of “Commissioner” of the following definition: <u>“ ‘Commissioner’, means the Commissioner of Correctional Services as defined in section 138 of the Correctional Services Act, 1998, or a person authorized by him or her;”</u>.</p> <p>2. The amendment of section 1 by the substitution for the definition of “Correctional Official” of the following definition: <u>“ ‘correctional official’ means a correctional official as defined in section 1 of the Correctional Services Act, 1998;”</u>.</p> <p>3. The amendment of section 1 by the substitution for the definition of “correctional supervision” of the following definition: <u>“ ‘correctional supervision’ means a community based sentence to which a person is subject in accordance with Chapter V and VI of the Correctional Service Act, 1998, and the regulations made under that Act if—</u> <u>(a) he has been placed under that section 6(1) (c);</u> <u>(b) it has been imposed on him under section 276(1)(h) or (i) and he, in the latter case, has been placed under that;</u> <u>(c) his sentence has been converted into that under section 276A(3)(e)(ii), 286B(4)(b)(ii) or 287(4)(b) or he has been placed under that section 286B(5)(iii) or 287(4)(a);</u> <u>(d) it is a condition on which the passing of his sentence has been postponed and he has been released under section 297(1)(a)(i)(ccA);</u> <u>or</u></p>

No. and year of law	Short title	Extent of repeal or amendment
		<p><u>(e) it is a condition on which the operation of—</u> <u>(i) the whole or any part;</u> <u>or</u> <u>(ii) any part,</u> <u>of his sentence has been suspended under section 297(1)(b) or (4), respectively;”.</u></p>

MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES BILL, 1998

The Correctional Services Bill is designed to break with the past and provide for a modern correctional system operating within the framework of the 1996 Constitution.

The primary focus of the Bill is on the rights and duties of prisoners, including sentenced and unsentenced prisoners, and persons serving sentences in the community. (The term, "community corrections" is used to refer to all sentences served in the community, namely parole, correctional supervision and other supervisory orders for which officials of the Department of Correctional Services have supervisory responsibilities.) The objectives of the correctional system are defined not only in general terms but also with specific reference to the group concerned. The Bill does provide for efficient checks and balances to prevent abuse of power and for a simple and fair system of determining when prisoners should be released.

The structure of the Department is a secondary focus and staff matters are specifically not covered fully but are left to be regulated by collective agreements between the Department and its employees, as regulated by the Labour Relations Act, 1995.

Chapter I

This chapter lists the definitions of key words in the Bill.

Chapter II

This chapter is deliberately brief — it only outlines the overall purpose of the correctional system and the basic structure of the Department of Correctional Services. The clause on the purpose already emphasises the thrusts of the Bill: to ensure that sentences of the courts are scrupulously carried out, and providing individuals with opportunities for development which are the hallmark of the new South Africa, as well as ensuring that the safe custody of prisoners takes place in conditions of human dignity.

Chapter III

This chapter consists of three parts, applicable to both sentenced and unsentenced prisoners.

Part A deals with general requirements. It states the minimum, non-derogable rights and duties which apply to all prisoners. Consequently it follows the provisions of section 35(2) of the Constitution closely. Careful attention is paid to instances where vulnerable groups such as children require additional protection. The difficult question in this part was to know what detail to include. Some matters will be better dealt with by regulation: For example, in the section on sleeping accommodation details are required to be spelt out in a regulation. This will allow the State some flexibility to operate a budget. At the same time it is bound to declare what it will provide and can be taken to task if it fails to do so. Moreover, what it says it will provide by way of accommodation must meet minimum requirements of human dignity.

Other matters are not dealt with in full in Part A of Chapter 2 but are spelt out in the chapters dealing with sentenced or unsentenced prisoners. This applies, for example, to development programmes which must in some instances be provided for sentenced prisoners or a class of sentenced prisoners but not for others.

Part B sets up a new disciplinary system in respect of prisoners. It has a number of noteworthy features. First, the definitions of the disciplinary infringements have been simplified and stated prominently in the Bill rather than in the regulations so that no prisoner can be in any doubt as to what is expected of him or her.

Secondly, the penalties that can be imposed have been changed. In an appropriate case a loss of gratuity may be imposed. There is the penalty of a restriction of amenities. It

envisages that for both sentenced and unsentenced prisoners the authorities will specify those (*different*) amenities which may be withdrawn for disciplinary purposes (provision for the specification of amenities is made in the chapter dealing with sentenced and unsentenced prisoners specifically). The most drastic penalty is solitary confinement for a maximum of 30 days. It was introduced to deal with the most serious and persistent disciplinary offenders. The reasoning is that it is better to have this penalty as part of the disciplinary system where its use can be closely monitored rather than allowing what is in fact the punishment of solitary confinement to be introduced by the back door under euphemisms such as segregation for control or intensive care.

The third feature of the new disciplinary policy is that it provides that, except for the informal hearing before the Head of Prison, where only minor penalties may be imposed, there must be a hearing before a specially trained disciplinary official who must follow procedures which meet the standards of a criminal trial. Moreover, the imposition of solitary confinement must be fully reviewed by the Inspecting Judge before it can be implemented.

Part C deals with the secure custody of all prisoners. It draws a balance between giving the authorities the necessary powers to detain prisoners securely and ensuring that these powers are not abused. Various safeguards relating to the use of segregation, mechanical restraints, firearms and non-lethal incapacitating devices are detailed.

CHAPTER IV

This chapter deals with sentenced prisoners and enacts, in addition to safe custody, an explicitly reformatory objective for this group of prisoners. It places obligations on them to work, to participate in planning their own prison careers, and to participate, to a limited extent in specified programmes, for example, where the prisoners concerned are illiterate or where participation is necessary because of their previous criminal conduct or because of the risk they pose to the community.

These duties on sentenced prisoners are balanced by duties placed on the Department. Through its development and support committees (which replace, with a different emphasis, the current institutional committees at each prison) the Department must provide a range of programmes and orientate the whole regime for sentenced prisoners, including the disciplinary process, towards enabling prisoners to lead a socially responsible and crime-free life after release.

CHAPTER V

Chapter V deals with unsentenced prisoners and includes not only prisoners awaiting trial or sentence, but all prisoners, other than sentenced prisoners, who may lawfully be detained. The simple, constitutionally-derived principle of minimum restriction compatible with security and good order, which should be applied to all such prisoners, is developed in this chapter.

CHAPTER VI

This chapter brings under one organisational structure all the various forms of sentence and supervision which are dealt with in the community. The various forms of community corrections are seen as playing a vital role in the development of the new South African correctional system and this chapter reflects that emphasis. The objectives of community corrections are carefully spelt out to encompass both the penal element of fulfilling the requirements which have been set by the court or other body imposing them and the wider objective of community corrections which, like the implementation of the sentence of imprisonment, is to enable the offender eventually to lead a crime-free and socially useful life. The key section is the one which lists the requirements relating to community corrections as it enables the court or other body responsible for imposing community corrections to select a regime appropriate for the particular individual.

Further sections spell out in detail that each of these conditions entails. The chapter also makes provision for a Supervision Committee to plan the career of the person subject to community corrections and to co-ordinate the process of supervising the conduct of such person. There is also provision for dealing with the person who fails to allow supervision or to meet the conditions which have been set.

CHAPTER VII

Chapter VII deals with release and placement on parole and under correctional supervision. The general principle is that all sentenced prisoners remain subject to some form of correction for the full period to which they were sentenced. The only exception is where the President uses his or her exceptional powers of intervention. The chapter develops a structure for considering the placement of sentenced prisoners on parole or under correctional supervision, that is, making them subject to community corrections. In most instances the decision to do so is taken by an independent body called the Correctional Supervision and Parole Board. The composition and powers and procedures of the Board are carefully outlined. The majority of its members are from outside the Department and its powers are limited by the fact that it may not consider anyone for community corrections until the person concerned has served at least half of the original sentence or a longer 'non-parole period' which a court may be entitled to impose. A prisoner serving a life sentence may not be considered for parole until at least twenty five years have elapsed and then the consideration must take place by the court.

CHAPTER VIII

Chapter VIII describes the structure and functions of the National Council. The Council is an independent body chaired by a High Court Judge. It includes representatives of the various government Departments involved in the criminal justice system, independent experts in the field of penology and representatives of the public. It has broad general advisory functions on all aspects of the correctional system.

CHAPTER IX

Chapter IX sets up an Independent Judicial Inspectorate under the control of an Inspecting Judge. Its function is primarily to prevent abuse in the treatment of prisoners and persons subjected to community corrections. It has wide powers of investigation and its independence is guaranteed by the provisions of this chapter.

CHAPTER X

Chapter X creates a network of Independent Prison Visitors for each prison. Their primary function is to deal with the complaints of prisoners and to serve as an independent local link with the Inspecting Judge. In each management area the Independent Prison Visitors are organised into a Visitors' Committee which co-ordinates their activities and which also has the task of involving the wider community in correctional matters.

CHAPTER XI

Chapter XI provides for internal service evaluation of the Department. The evaluation is not only financial but is a mechanism for ensuring that provisions of the Bill and the policy made in terms thereof are implemented effectively.

CHAPTER XII

Chapter XII deals with the officials of the Department to the extent that this is required in addition to the provisions of the Labour Relations Act which apply generally to the Department and its relationship to its employees. Of particular importance are the delegation of powers and the guarantee of the professional independence of those professions such as medical practitioners, nurses and ministers of religion who deal directly with prisoners.

CHAPTER XIII

Chapter XIII grants correctional officials the powers of enforcement that they need in respect of persons other than prisoners to ensure the security of prisons and the ability to execute all sentences imposed by the courts. These powers are carefully circumscribed to prevent abuse.

CHAPTER XIV

Chapter XIV deals with joint venture prisons, a concept that was introduced during 1997, allowing a private entity to design, construct, finance or operate a prison. It regulates the duties and restrictions applying to such private entities and guarantees the constitutional rights of prisoners under such a regime.

CHAPTER XV

Chapter XV defines the offences which constitute contraventions and the penalties that may be imposed if they are committed. Particular attention has been paid to balancing the requirements of freedom of speech with the need to ensure the security and privacy of prisoners in the rehabilitative process.

CHAPTER XVI

This chapter contains general provisions of which the power to make regulations is of particular importance.

Parliamentary procedure

The State Law Advisers 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.

Institutions and persons consulted

- All State Departments
- The judiciary
- Non-governmental organisations
- International organisations on correctional matters
- Organised labour
- Prisoners
- Private individuals