

REPUBLIC OF SOUTH AFRICA

CHILD CARE AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)

(MINISTER FOR WELFARE AND POPULATION DEVELOPMENT)

[B 14—99]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP KINDERSORG

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

(MINISTER VIR WELSYN EN BEVOLKINGSONTWIKKELING)

[W 14—99]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Child Care Act, 1983, so as to provide for a right of appeal against certain orders relating to children; to provide for the establishment of secure care facilities; to revoke the power of the Minister to transfer certain pupils and children to any institution, custody or supervision mentioned in section 290 of the Criminal Procedure Act, 1975; to provide for the prohibition against the commercial sexual exploitation of children; and to make further provision for the estimation of a person's age in certain proceedings; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 74 of 1983, as amended by section 2 of Act 34 of 1986, section 1 of Act 86 of 1991, section 1 of Act 96 of 1996 and section 1 of Act 56 of 1998

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1. Section 1 of the Child Care Act, 1983 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of “children's home” of the following definition:

“ ‘commercial sexual exploitation’ means the procurement of a child to perform a sexual act for a financial or other reward payable to the child, the parents or guardian of the child, the procurer or any other person;”;
and

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- (b) by the insertion after the definition of “school of industries” of the following definitions:

“ ‘secure care’ means the physical, behavioural and emotional containment of children in a residential care facility that offers an environment and programme conducive to their care, safety and healthy development; ‘secure care facility’ means a residential care facility established under section 28A;”.

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Insertion of section 16A in Act 74 of 1983

2. The following section is hereby inserted in Chapter 3 of the principal Act, after section 16:

“Appeals

16A. An appeal shall lie against any order made or any refusal to make an order in terms of section 11, 15 or 38(2)(a), or against the variation, suspension or rescission of such order, to the competent division of the High Court of South Africa, and if brought, shall be noted and prosecuted as if it were an appeal against a civil judgement of a magistrate’s court.”. 5

Insertion of section 28A in Act 74 of 1983

3. The following section is hereby inserted in the principal Act after section 28:

“Secure care facilities

28A. The Minister may, with the concurrence of the Minister of Finance, out of monies appropriated by Parliament for that purpose, establish and maintain secure care facilities for the reception and secure care of children under any law and of children awaiting trial or sentence.”. 10

Amendment of section 34 of Act 74 of 1983, as amended by section 10 of Act 86 of 1991 15

4. Section 34 of the principal Act is hereby amended—

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

“(1) The Minister may [**subject to the provisions of subsection (3),** by order in writing transfer any pupil or child from any institution to which he or she has lawfully been sent or from any custody (except the custody of his or her parent or guardian or of the person mentioned in section 15(1)(a)) in which or supervision under which he or she has lawfully been placed, to any institution, custody or supervision mentioned in section 15 of this Act **[or section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)].**”; and 20

(b) by the deletion of subsection (3). 25

Insertion of section 50A in Act 74 of 1983

5. The following section is hereby inserted in the principal Act after section 50:

“Commercial sexual exploitation of children

50A. (1) Any person who participates or is involved in the commercial sexual exploitation of a child shall be guilty of an offence. 30

(2) Any person who is an owner, lessor, manager, tenant or occupier of property on which the commercial sexual exploitation of a child occurs and who, within a reasonable time of gaining information of such occurrence, fails to report such occurrence at a police station, shall be guilty of an offence. 35

(3) Any person who is convicted of an offence in terms of this section, shall be liable to a fine, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.”. 40

Amendment of section 54 of Act 74 of 1983 40

6. Section 54 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Whenever in any proceedings in terms of this Act the age of any person is a relevant fact of which no or insufficient evidence is available, the officer presiding at those proceedings may estimate the age of that person by his or her appearance [or] and from any information which is available, and the age so estimated shall for the purposes of this Act be deemed to be the true age of that person.”. 45

Short title and commencement

7. This Act is called the Child Care Amendment Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CHILD CARE AMENDMENT BILL, 1999

OBJECTS

This Bill purports to serve as an urgent interim measure to facilitate the transformation of the child and youth care system, by amending the Child Care Act, 1983 (Act No. 74 of 1983), hereinafter referred to as “the Act”, by—

- (a) the insertion of section 16A so as to provide for a right of appeal against any order or refusal to make any order in terms of sections 11, 15 or 38(2)(a) of the Act;
- (b) the insertion of section 28A so as to provide for the establishment and maintenance of secure care facilities for the reception of children under any law and for the accommodation of children awaiting trial or sentence;
- (c) the amendment of subsection (1) and repeal of subsection (3) of section 34 so as to revoke the power of the Minister to transfer certain pupils and children to any institution, custody or supervision mentioned in section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (d) the insertion of section 50A so as to provide for the prohibition against the commercial sexual exploitation of children;
- (e) the amendment of section 54 by requiring that in proceedings where a person’s age is a relevant fact of which insufficient evidence is available, the age must be estimated by the person’s appearance as well as from any other information.

CONSULTATION

The Drafting Committees of the SA Law Commission for Child Justice Legislation and the Review of the Child Care Act were requested to send representatives to a consultative meeting with representatives from the national Department of Welfare and the Interministerial Committee for Children at Risk. This meeting was held in Cape Town in November 1998. Thereafter, a group of drafters from the aforesaid group worked together to prepare a draft bill, which was presented to the Minister for Welfare and Population Development on 18 December 1998. The MECs responsible for welfare in the provinces were consulted.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Welfare and Population Development are of the view that the 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.

