

REPUBLIC OF SOUTH AFRICA

**PROBATION SERVICES
AMENDMENT BILL**

(As amended by the Portfolio Committee on Welfare (National Assembly))

(MINISTER FOR WELFARE AND POPULATION DEVELOPMENT)

[B 15B—99]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
PROEFDIENSTE**

(Soos gewysig deur die Portefeuljekomitee oor Welsyn (Nasionale Vergadering))

(MINISTER VIR WELSYN EN BEVOLKINGSONTWIKKELING)

[W 15B—99]

ISBN 0 621 29009 2

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Probation Services Act, 1991, so as to insert certain definitions and amend others; to make further provision for programmes aimed at the prevention and combating of crime; to extend the powers and duties of probation officers; to provide for the mandatory assessment of arrested children; and to provide for the establishment of reception, assessment and referral services and centres; 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 116 of 1991

- 1.** Section 1 of the Probation Services Act, 1991 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion before the definition of “authorised probation officer” of the following definitions: 10
- “assessment’ means a process of developmental assessment and evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factors;
- ‘assistant probation officer’ means a person who is appointed under section 2 and who assists and works under the supervision of a probation officer;”; 15
- (b) by the substitution for the definition of “authorized probation officer” of the following definition: 20
- “ ‘authorized probation officer’ means a probation officer authorized or directed by the Minister to perform any function entrusted to an authorized probation officer under this Act and, except in sections 9(1) and 15A, includes an authorized assistant probation officer;”;
- (c) by the insertion after the definition of “authorized probation officer” of the following definition: 25
- “ child’ means any person under the age of 18 years;”;
- (d) by the insertion after the definition of “committee” of the following definition: 30
- “ ‘criminal justice system’ means any proceedings under any law regarding the prosecution of a person who is suspected of having committed an offence, or the conviction or sentencing of a person who has committed an offence;”;

- (e) by the insertion after the definition of “Director-general” of the following definitions:
- “ ‘diversion’ means the referral of a case which would normally be decided in terms of the criminal justice system for disposal outside that system; 5
- ‘diversion programme’ means a programme within the context of the family and community—
- (a) in respect of a person who is alleged to have committed an offence;
- (b) which is aimed at keeping that person away from the criminal justice system; and 10
- (c) which promotes the development, accountability and effective integration of that person within society;
- ‘early intervention’ means the provision of services and programmes aimed at preventing the need for a person who is alleged to have committed an offence, to be dealt with in terms of the criminal justice system; 15
- ‘family finder’ means a volunteer appointed under section 9;
- ‘family group conferencing’ means a meeting and subsequent programme which involves the person who is alleged to have committed an offence, his or her parents and family members, the victim of the offence and other relevant parties to find ways to make restitution for the harm caused by the offender; 20
- ‘family member’ means a person who is related to another person biologically, by law or according to customary law;”;
- (f) by the substitution for the definition of “probation officer” of the following definition: 25
- “ ‘probation officer’ means a person who complies with the prescribed requirements, and who has been appointed under section 2 and includes an assistant probation officer;”;
- (g) by the insertion after the definition of “regulation” of the following definition: 30
- “ ‘restorative justice’ means the promotion of reconciliation, restitution and responsibility through the involvement of parents, family members, victims and communities;”.

Amendment of section 3 of Act 116 of 1991

2. Section 3 of the principal Act is hereby amended— 35
- (a) by the substitution for the words preceding paragraph (a) of the following words:
- “The Minister may, in respect of different categories of persons, establish or cause to be established programmes or services which are aimed at—”; 40
- (b) by the substitution for paragraph (a) of the following paragraph:
- “(a) the prevention and combating of crime;”;
- (c) by the substitution for paragraph (d) of the following paragraph:
- “(d) the assessment, care, [and] treatment, support, referral for and provision of mediation in respect of the victims of crime;”;
- (d) by the deletion at the end of paragraph (i) of the word “and” and the addition after paragraph (j) of the following paragraphs: 45
- “(k) early intervention, including family group conferencing;
- (l) restorative justice as part of appropriate sentencing and diversion options.” 50

Amendment of section 4 of Act 116 of 1991

3. Section 4 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraphs:

- “(i) the reception, assessment and referral of an accused person and the rendering of early intervention services and programmes, including mediation and family group conferencing;
- (j) the investigation of the circumstances of an accused person and the provision of a pre-trial report recommending the desirability or otherwise of prosecution;
- (k) the investigation of the circumstances of a convicted person, the compiling of a pre-sentencing report, the recommendation of an appropriate sentence and the giving of evidence before the court;
- (l) the mandatory assessment of a child as contemplated in section 4A.”

Insertion of section 4A in Act 116 of 1991

4. The following section is hereby inserted in the principal Act after section 4:

“Mandatory assessment of arrested children

4A. (1) Every child who is alleged to have committed an offence shall as soon as possible but not later than 48 hours after his or her arrest be assessed by a probation officer.

(2) If the child has not yet appeared in court when the assessment is conducted, the probation officer may request the police official charged with the investigation of the case to arrange that the child be detained in a place of safety or a secure care facility established under the Child Care Act, 1983 (Act No. 74 of 1983), or a prison, with due regard to the best interests of the child and in the least restrictive and most supportive environment.

(3) Immediately after the assessment contemplated in subsection (1) the probation officer shall recommend to the public prosecutor concerned—

- (a) that no further action be taken in respect of the alleged offence;
- (b) diversion to a specified process or programme;
- (c) that the matter not be diverted;
- (d) that the matter be referred to a children’s court established under the Child Care Act, 1983;
- (e) that the child be released to a parent or to an appropriate adult, or on the child’s own recognisances; or
- (f) any combination of the options mentioned in paragraphs (a) to (e) or any other option provided for by law.

(4) If the child is brought before a court the probation officer may request the court to order that the child be detained in a place of safety or a secure care facility established under the Child Care Act, 1983, or a prison, with due regard to the best interests of the child and in the least restrictive and most supportive environment.

(5) If the child is brought before a court the public prosecutor shall submit the report regarding the assessment by the probation officer to the court and the court may at any time during the proceedings direct the probation officer to give evidence.

(6) This section does not derogate from any other law whereby an arrested person may be released on bail or on warning or on a written notice to appear in court.”

Insertion of section 8A in Act 116 of 1991

5. The following section is hereby inserted in the principal Act after section 8:

“Establishment of reception, assessment and referral services and centres

- 8A.** The Minister may—
- (a) establish and maintain reception, assessment and referral services for the provision of early intervention with regard to children; and
- (b) establish and maintain centres therefor.”

Insertion of section 15A in Act 116 of 1991

6. The following section is hereby inserted in the principal Act after section 15:

“Family finders

15A. Whenever a child is brought before the court and the whereabouts of that child’s parents or guardian are unknown, an authorized probation officer shall designate a family finder to trace the parents or guardian and to bring them to court in order to assist the child in the case.” 5

Short title and commencement

7. This Act is called the Probation Services Amendment Act, 1999, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 10

**MEMORANDUM ON THE OBJECTS OF THE PROBATION
SERVICES AMENDMENT BILL, 1999**

OBJECTS

This Bill seeks to serve as an urgent interim measure to facilitate the transformation of the child and youth care system by amending the Probation Services Act, 1991 (Act No. 116 of 1991), hereinafter referred to as “the Act,” by—

- (a) amending the definitions of “probation officer” and “authorized probation officer”, so as to extend the meaning thereof to include an “assistant probation officer” and an “authorized assistant probation officer” who will assist probation officers in the performance of their duties;
- (b) inserting the definition of “family finder” whose main function would be to trace the parents or guardian of a child who is being prosecuted, so as to make them available to assist the child in court;
- (c) introducing assessment, support, referral and mediation services in respect of victims of crime;
- (d) introducing crime prevention strategies through the provision of early intervention programmes including diversion services and family group conferencing;
- (e) providing for the establishment of restorative justice programmes and services as part of appropriate sentencing and diversion options;
- (f) providing for the reception, assessment and referral of an accused person and the rendering of early intervention services and programmes, the investigation of the circumstances of an accused person and the provision of a pre-trial report on the desirability or otherwise of prosecution and the investigation of the circumstances of convicted persons;
- (g) providing for the competency of a probation officer to recommend an appropriate sentence or other options to the court and for the mandatory assessment of every arrested child within 48 hours of his or her arrest; and
- (h) providing for the establishment of assessment and referral services and centres with regard to children.

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 from 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 also consulted.

PARLIAMENTARY PROCEDURE

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