

REPUBLIC OF SOUTH AFRICA

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

[B 43—2001]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*

[B 43A—2001]

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AMENDMENTS AGREED TO

JUDICIAL MATTERS AMENDMENT BILL
[B 43—2001]

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 149 of Act 24 of 1936, as amended by section 33 of Act 42 of 2000

2. Section 149 of the Insolvency Act, 1936, is amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that when it appears to the court equitable or convenient that the estate of a person **[not domiciled in the Republic be sequestrated elsewhere,]** domiciled in a State which has not been designated in terms of section 2 of the Cross-Border Insolvency Act, 2000 (Act No. 42 of 2000), should be sequestrated by a court outside the Republic, or that the estate of a person over whom it has jurisdiction be sequestrated by another court within the Republic, the court may refuse or postpone the acceptance of the surrender or the sequestration.”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 19 of Act 67 of 1962, as amended by section 8 of Act 77 of 1996

3. The following section is substituted for section 19 of the Extradition Act, 1962:

“Persons surrendered to Republic not to be detained or tried for certain offences in certain circumstances

19. No person surrendered to the Republic by any foreign State in terms of an extradition agreement or by any designated State shall, until he or she has been returned or had an opportunity of returning to such foreign or designated State, be detained or tried in the Republic for any offence committed prior to his or her surrender other than the offence in respect of which extradition was sought or an offence of which he or she may lawfully be convicted on a charge of the offence in respect of which extradition was sought, unless such foreign or designated State or such person consents thereto: Provided that any such person may at the request of another foreign or designated State and with a view to his or her surrender to such State, be detained in the Republic for an extraditable offence which was so committed [and to which that agreement relates], provided such detention is not contrary to the laws of [or the extradition agreement with] the State which surrendered him or her to the Republic.”.

NEW CLAUSES

1. That the following be new Clauses:

Insertion of section 63A in Act 51 of 1977

6. The following section is inserted after section 63 of the Criminal Procedure Act, 1977:

“Release or amendment of bail conditions of accused on account of prison conditions

63A. (1) If a Head of Prison contemplated in the Correctional Services Act, 1998 (Act No. 111 of 1998), is satisfied that the prison population of a particular prison is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused—

- (a) who is charged with an offence falling within the category of offences—
- (i) for which a police official may grant bail in terms of section 59; or
 - (ii) referred to in Schedule 7;
- (b) who has been granted bail by any lower court in respect of that offence, but is unable to pay the amount of bail concerned; and
- (c) who is not also in detention in respect of any other offence falling outside the category of offences referred to in paragraph (a),

that Head of Prison may apply to the said court for the—

- (aa) release of the accused on warning in lieu of bail; or
- (bb) amendment of the bail conditions imposed by that court on the accused.

(2) (a) An application contemplated in subsection (1) must be lodged in writing with the clerk of the court, and must—

- (i) contain an affidavit or affirmation by the Head of Prison to the effect that he or she is satisfied that the prison population of the prison concerned is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of the accused concerned; and
- (ii) contain a written certificate by the Director of Public Prosecutions concerned, or a prosecutor authorised thereto by him or her in writing, to the effect that the prosecuting authority does not oppose the application.

(b) The accused and his or her legal representative, if any, must be notified of an application referred to in subsection (1).

(c) The clerk of the court must, without delay, cause the application to be placed before any magistrate or regional magistrate, as the case may be, who may consider the application in chambers.

(d) The application may be considered in the presence of the accused if the magistrate or regional magistrate deems it necessary.

(3) (a) If the magistrate or regional magistrate is satisfied that the application complies with the requirements set out in subsection (2)(a), he or she may—

- (i) order the release of the accused from custody and, if the accused is present, warn him or her to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to

- remain in attendance at the proceedings relating to the offence in question, and the court may, at the time of such order or at any time thereafter, impose any condition referred to in section 62 in connection with such release; or
- (ii) reduce the amount of bail determined under section 60 and, if deemed appropriate, amend or supplement any condition imposed under section 60 or 62.

(b) If the accused is absent when an order referred to in paragraph (a)(i) is made or when bail conditions are amended in terms of paragraph (a)(ii), a correctional official duly authorised by the Head of the prison where the accused is in custody must—

- (i) hand to the accused a certified copy of the said order or of the bail conditions as amended and explain to the accused the import thereof; and
- (ii) return to the clerk of the court a certificate under the hand of that official and signed by the accused, that he or she has handed the certified copy of such order or conditions to the accused and that he or she has explained to the accused the import thereof,

and the mere production to the court of the said certificate shall be *prima facie* proof that the said certified copy was handed and explained to the accused.

(c) The provisions of section 72(2)(a) apply, with the necessary changes, in respect of an accused released in terms of paragraph (a)(i).

(4) (a) The National Director of Public Prosecutions may, in consultation with the Commissioner of Correctional Services, issue directives regarding—

- (i) the establishment of monitoring and consultative mechanisms for bringing an application contemplated in subsection (1); and
- (ii) the procedure to be followed by a Head of Prison and a Director of Public Prosecutions whenever it appears that it is necessary to bring an application contemplated in subsection (1).

(b) Any directives issued in terms of paragraph (a) must be submitted to Parliament before they take effect.”.

Substitution of section 64 of Act 51 of 1977, as substituted by section 6 of Act 75 of 1995 and amended by section 5 of Act 85 of 1997

7. The following section is substituted for section 64 of the Criminal Procedure Act, 1977:

“Proceedings with regard to bail and conditions to be recorded in full

64. The court dealing with bail proceedings as contemplated in section 50(6) or which considers bail under section 60 or which imposes any further condition under section 62 or which, under section 63 or 63A, amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof, or shall cause such proceedings to be recorded in full, and where such court is a magistrate’s court or a regional court, any document purporting to be an extract from the record of

proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be prima facie proof of such conditions or any amendment or supplementation thereof.”.

CLAUSE 4

1. On page 3, in line 36, after “psychiatrist” to insert:
and a clinical psychologist
2. On page 3, in line 39, to omit “(i)” and to substitute “(a)”.
3. On page 3, in line 43, to omit “(i)” and to substitute “(a)”.
4. On page 3, in line 45, to omit “(ii)” and to substitute “(b)”.
5. On page 3, in line 51, to omit “(i)” and to substitute “(a)”.
6. On page 3, in line 52, to omit “or” and to substitute “and”.
7. On page 3, in line 54, to omit “or” and to substitute “and”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 9 of Act 90 of 1986, as amended by section 4 of Act 74 of 1998

- 11.** (1) Section 9 of the Sheriffs Act, 1986, is amended by—
- (a) the substitution for paragraph (a) of subsection (2) of the following paragraph:
“(a) not fewer than six and not more than nine sheriffs, each from a different province of the Republic, chosen by the Minister from among at least [**twelve**] eighteen sheriffs[, **whose names have been submitted for that purpose by the South African Institute for Sheriffs**] nominated from within the Sheriff’s profession, of whom at least two must be nominated from each province, to represent the profession as a whole;”;
 - (b) the deletion of subsection (3).
- (2) Any person holding office as a member of the Board for Sheriffs in terms of section 9(2)(a) of the Sheriffs Act, 1986, at the commencement of this Act, shall continue in that office for the remainder of his or her term of office.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of the Schedule to Act 72 of 1996

- 15.** The Schedule to the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996, is amended by the substitution for Article 44 of the following Article:

“Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.”.

CLAUSE 11

1. Clause rejected.

CLAUSE 13

1. On page 5, in lines 32 and 33, to omit “[**to the maintenance court where any such order was made**] within the area of jurisdiction of the maintenance court” and to substitute:

to the maintenance court where [**any such order was made**]

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 1 of Act 120 of 1998

19. Section 1 of the Recognition of Customary Marriages Act, 1998, is amended by the substitution for the definition of “court” of the following definition:

“ ‘court’ means a High Court of South Africa, [**or**] a family court established under any law[, **and for purposes of section 8,**] or a Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929);”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 25 of Act 2 of 2000

28. Section 25 of the Access to Information Act is amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, [**The**] the information officer to whom [**a**] the request [**for access**] is made or transferred, must, [**subject**

to section 26 and Chapter 5 of this Part,] as soon as reasonably possible, but in any event within 30 days, after the request is received—”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 49 of Act 2 of 2000

37. Section 49 of the Access to Information Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The information officer of a public body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 47—

- (a) decide, after giving due regard to any representations made by a third party in terms of section 48, whether to grant the request for access; **[and]**
- (b) notify the third party so informed and a third party not informed in terms of section 47 (1), but that made representations in terms of section 48 or is located before the decision is taken, of the decision; **and**
- (c) notify the requester of the decision and, if the requester stated, as contemplated in section 18(2)(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible, and if the request is—
 - (i) granted, notify the requester in accordance with section 25(2); or
 - (ii) refused, notify the requester in accordance with section 25(3).”.

CLAUSE 31

1. Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 56 of Act 2 of 2000

39. Section 56 of the Access to Information Act is amended by—

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

“**[Subject to]** Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the head of the private body to whom the request is made must, as soon as reasonably possible, but in any event within 30 days, after the request has been received or after the particulars required in terms of section 53(2) have been received—; and
- (b) the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) that the requester may lodge an application with a court against the access fee to be paid or the form of

access granted, and the procedure, including the period allowed, for lodging the application.”.

CLAUSE 33

1. On page 8, in line 48, to omit “or her” and to substitute “or her”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 73 of Act 2 of 2000

44. Section 73 of the Access to Information Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The head of a private body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 71—

- (a) decide, after giving due regard to any representations made by a third party in terms of section 72, whether to grant the request for access; **[and]**
- (b) notify the third party so informed and a third party not informed in terms of section 71, but that made representations in terms of section 72 or is located before the decision is taken, of the decision; and
- (c) notify the requester of the decision and, if the requester stated, as contemplated in section 53(2)(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible, and if the request is—
 - (i) granted, notify the requester in accordance with section 56(2); or
 - (ii) refused, notify the requester in accordance with section 56(3).”.

NEW CLAUSE

1. That the following be a new Clause:

Repeal of section 33 of Act 42 of 2000

47. Section 33 of the Cross-Border Insolvency Act, 2000, is repealed.

CLAUSE 38

1. On page 9, after line 35, to insert:

(3) Section 8 shall come into operation on the date of commencement of the Criminal Matters Amendment Act, 1998 (Act No. 68 of 1998).

LONG TITLE

1. On page 2, in the second line, after “Courts” to insert:

to amend the Insolvency Act, 1936, so as to further regulate the jurisdiction of the High Court; to amend the Extradition Act, 1962, so as to provide that the law of speciality applies in cases of surrender in terms of a designation;

2. On page 2, in the sixth line, after “as” to insert:

to provide for the release or amendment of bail conditions of an accused on account of prison conditions;
3. On page 2, in the twelfth line, after “Constitution” to insert:

to amend the Sheriffs Act, 1986, so as to further regulate the constitution of the Board for Sheriffs;
4. On page 2, in the fifteenth line, after “provision;” to insert:

to amend the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996, so as to effect a textual correction;
5. On page 2, in the twentieth line, after “made;” to insert:

to amend the Recognition of Customary Marriages Act, 1998, so as to substitute a definition;
6. On page 2, in the twenty third line, after “correction;” to insert:

to amend the Cross-Border Insolvency Act, 2000, so as to repeal a provision;

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