

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL SERVICES AMENDMENT BILL

*(As amended by the Portfolio Committee on Correctional Services (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF CORRECTIONAL SERVICES)

[B 8B—2001]

ISBN 0 621 30941 9

No. of copies printed 1 800

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 Correctional Services Act, 1998, so as to insert certain definitions and substitute others; to further regulate, in relation to prisoners, custody, detention, accommodation, medical examinations, searches, nutrition, disciplinary proceedings, the use of force, non-lethal incapacitating devices and firearms on prisoners, labour, non-compliance of community corrections, the length and form of sentences and the disposal of unclaimed property; to further regulate the composition and functions of Correctional Supervision and Parole Boards; to provide afresh for the object of the Judicial Inspectorate; to further regulate the functions of the Inspecting Judge; to amplify the functions of the Commissioner with regard to internal service evaluation so as to include the investigation of theft, fraud, corruption and other dishonest practices or irregularities in the Department; to provide that the Commissioner may approve the establishment of canteens for use by officials and other persons; to amplify and redefine the Minister's powers to make regulations; to provide for matters with regard to which the Commissioner may issue orders; to provide afresh for transitional provisions with regard to prisoners serving particular sentences; and to effect textual alterations; 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 111 of 1998

1. Section 1 of the Correctional Services Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of "Amenities" of the following definition:

“ ‘amenities’ means [—(a)] recreational and other activities, diversions or privileges **[prescribed by regulation; and (b) with reference to their restriction as a penalty for disciplinary infringements, only those rights granted beyond the mandatory minimum stipulated in this Act;]** which are granted to prisoners in addition to what they are entitled to as of right and in terms of this Act and include—

- (a) exercise;
- (b) contact with the community;
- (c) reading material;
- (d) recreation; and
- (e) incentive schemes;”;

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- (b) by the insertion after the definition of “Assistants” of the following definition:
 “ ‘authorised official’ means a correctional official authorised by a Head of Prison to conduct disciplinary proceedings as contemplated in section 24;”;
- (c) by the substitution for the definition of “Commissioner” of the following definition: 5
 “ ‘Commissioner’ means the Commissioner of Correctional Services, **[appointed under]** contemplated in section 3(3);”;
- (d) by the substitution for the definition of “Controller” of the following definition: 10
 “ ‘Controller’ means a **[senior]** correctional official on or above the post level of senior correctional official in the employ of the Department and employed under section 105;”;
- (e) by the insertion after the definition of “Director” of the following definition: 15
 “ ‘disability’ means a physical or mental condition which prevents a prisoner from operating in an environment developed for persons without such an impairment, and includes—
 (a) deafness;
 (b) dumbness;
 (c) paraplegia;
 (d) quadriplegia;
 (e) non-certifiable mental conditions;
 (f) blindness or extreme impairment of vision;”;
- (f) by the deletion of the definition of “senior correctional official” ;
- (g) by the substitution for the definition of “Temporary Manager” of the following definition: 25
 “ ‘Temporary Manager’ means a **[senior]** correctional official on or above the post level of senior correctional official in the employ of the Department appointed for the purposes referred to in section 112;”;
- (h) by the insertion after the definition of “Temporary Manager” of the following definition: 30
 “ ‘this Act’ includes the regulations and orders promulgated under this Act;”.

Amendment of section 3 of Act 111 of 1998

2. Section 3 of the principal Act is hereby amended— 35
- (a) by the deletion of the word “and” at the end of subsection (5)(f) and by the substitution in subsection (5) for paragraph (g) of the following paragraph:
 “(g) appoint, remunerate, promote, transfer, discipline or dismiss correctional officials in accordance with [the provisions of] this Act, [and] the Labour Relations Act and the Public Service Act; and”;
- (b) by the addition to subsection (5) of the following paragraph:
 “(h) enter into collective agreements as provided for in the Labour Relations Act pertaining to matters within his or her authority.”.

Amendment of section 4 of Act 111 of 1998

3. Section 4 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively: 45
- “(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]** which does not affect the prisoner to a greater degree or for a longer period than necessary. 50
- (c) The minimum rights of prisoners entrenched in this Act must not be violated or restricted for disciplinary or any other purpose, but the Commissioner may restrict, suspend or revise amenities for prisoners of different categories.”.

Amendment of section 5 of Act 111 of 1998

4. Section 5 of the principal Act is hereby amended by the substitution for subsection 1 of the following subsection: 55
- “(1) The Minister may, by notice in the Gazette, establish and review the establishment of prisons for—

- (a) the detention and treatment of prisoners;
- (b) particular purposes in relation to prisoners; or
- (c) particular categories of prisoners.”.

Amendment of section 6 of Act 111 of 1998

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 5

“(5) As soon as possible after admission, every prisoner must—

- (a) bath or shower; and
- (b) 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 to protect or maintain the health of the prisoners or other persons.”.

Amendment of section 7 of Act 111 of 1998

6. Section 7 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 15

“(d) **[Further requirements that]** The Commissioner may detain prisoners of specific age, health **[categories]** or security risk categories **[must be kept separate must be prescribed by regulation]** separately.”; and 20

- (b) by the addition to subsection (2) of the following paragraphs:

“(e) The Commissioner may accommodate prisoners in single or communal cells depending on the availability of accommodation.

(f) Where there is a danger of prisoners who are awaiting trial or sentence defeating the ends of justice by their association with other prisoners, the Commissioner must detain them apart.”.

Amendment of section 8 of Act 111 of 1998

7. Section 8 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast [during each 24-hour period].”.

Amendment of section 12 of Act 111 of 1998

8. Section 12 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph: 35

“(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.”. 40

Amendment of section 16 of Act 111 of 1998

9. Section 16 of the principal Act is hereby amended by the addition of the following subsections:

“(3) The Department must take measures, in terms of planning, policy and infrastructure, to accommodate prisoners with disabilities in order to enable such prisoners, where practicable, to fully exercise the rights and to enjoy the amenities to which every prisoner is entitled. 45

(4) The Department must take measures, in terms of planning, policy and infrastructure, in order to create an environment sensitive to the gender of all prisoners.”.

Amendment of section 20 of Act 111 of 1998

10. Section 20 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) A female prisoner may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is five years of age. 5

(2) The Department is responsible for food, clothing, health care as contemplated in section 12 and facilities for the sound development of the child for the period that such child remains in prison.”.

Amendment of section 21 of Act 111 of 1998

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11. Section 21 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) if the complaint concerns an alleged assault, ensure that the prisoner undergoes an immediate medical examination and receives the **[prescribed]** treatment prescribed by the medical officer.”. 15

Amendment of section 24 of Act 111 of 1998

12. Section 24 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections, respectively:

“(1) Disciplinary hearings must be fair and may be conducted either by a disciplinary official, **[or]** a Head of Prison or an authorised official. 20

(2) (a) A hearing before a Head of Prison or the authorised official must be conducted informally and without representation.

(b) At such hearing the prisoner must be informed of the allegation against him or her, **[and have]** whereupon the prisoner has the right to refute the allegation.

(c) The proceedings of a hearing contemplated in paragraph (a) must be recorded in writing by a correctional official. 25

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

(a) **[a]** A reprimand; 30

(b) a loss of gratuity for a period not exceeding one month; 30

(c) restriction of amenities for a period not exceeding seven days.

(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, but the disciplinary official may order that the accused prisoner be removed and that the hearing continue in his or her absence if, during the hearing, the accused prisoner acts in such a way as to make the continuation of the hearing in his or her presence impracticable; 35

(c) has the right to be heard, to cross-examine and to call witnesses; **[and]**

(d) has the right to be represented by a legal practitioner of his or her choice at his or her own expense, unless a request to be represented by a particular legal practitioner would cause an unreasonable delay in the finalisation of the hearing in which case the prisoner may be instructed to obtain the services of another legal practitioner; and 40

(e) has the right to be given reasons for the decision.”. 45

Amendment of section 26 of Act 111 of 1998

13. Section 26 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“In order to achieve **[these]** the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, a correctional official may—”;

(b) by the deletion in subsection (2), of paragraph (c); and

(c) by the addition of the following subsection:

“(3) In order to achieve the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, the Commissioner may classify and allocate accommodation to prisoners.”.

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Amendment of section 27 of Act 111 of 1998

14. Section 27 of the principal Act is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 “(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**] that prisoner, to any correctional official, to any other person or to the security of the prison.”; and
- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “A search of the person of a prisoner contemplated in subsection (2) is subject to the following restrictions.”.

Amendment of section 28 of Act 111 of 1998

15. Section 28 of the principal Act is hereby amended—
- (a) by the deletion of the word “and” at the end of subsection (1)(d);
- (b) by the insertion in subsection 1(e), after the word “prisoner”, where it occurs for the second time, of the expression “; and”; and
- (c) by the addition to subsection (1) of the following paragraph:
 “(d) the attachment of an electronic or other device to the body of the prisoner in the manner prescribed by regulation.”.

Amendment of section 30 of Act 111 of 1998

16. Section 30 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “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, other than normal accommodation in a single cell as contemplated in section 7(2)(e), is permissible—”; and
- (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:
 “(f) if at the request of the [**police**] South African Police Service, the Head of Prison considers that it is in the interests of the administration of justice.”.

Amendment of section 31 of Act 111 of 1998

17. Section 31 of the principal Act is hereby amended by the addition of the following subsection:
 “(7) Mechanical restraints in addition to handcuffs or leg-irons may only be used on prisoners when outside their cells.”.

Amendment of section 32 of Act 111 of 1998

18. Section 32 of the principal Act is hereby amended—
- (a) by the addition to subsection (1) of the following paragraph:
 “(c) A correctional official may not use force against a prisoner except when it is necessary for—
 (i) self-defence;
 (ii) the defence of any other person;
 (iii) preventing a prisoner from escaping; or
 (iv) the protection of property.”; and
- (b) by the substitution for subsection (5) of the following subsection:
 “(5) If force was used, the prisoner concerned must undergo an immediate medical examination and receive the [**prescribed**] treatment prescribed by the medical officer.”.

Amendment of section 33 of Act 111 of 1998

19. Section 33 of the principal Act is hereby amended—

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

“(1) Non-lethal incapacitating devices may only be issued to a correctional official on the authority of the Head of Prison **[or the Head of Community Corrections]**.”; and

(b) by the addition of the following subsections:

“(5) Teargas grenades and cartridges fired by firearms or launch-tubes may not be fired or launched directly at a person or into a crowd.

(6) Whenever a correctional official decides to use teargas he or she must be convinced that its use in the specific situation meets the requirements of minimum and proportionate force as required by section 32(1)(b).

(7) If a prisoner has been affected by teargas he or she must receive medical treatment as soon as the situation allows.”.

Substitution of section 34 of Act 111 of 1998

20. The following section is hereby substituted for section 34 of the principal Act:

“Firearms

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

(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.]** Firearms may only be used as a last resort and then only—

(a) in self-defence;

(b) in defence of any other person;

(c) to prevent a prisoner from escaping; or

(d) when the security of the prison or the safety of prisoners or other persons is threatened.

(4) Before a firearm is fired, the following procedure must be adhered to, if circumstances permit:

(a) A verbal warning must be given;

(b) if the warning is of no effect, a warning shot must be fired;

(c) if the warnings are of no effect, the line of fire should be directed in such a manner that the probable result will not be a fatal injury.

(5) Weapons equipped for firing rubber-type ammunition may only be issued to trained correctional officials and then only for training purposes or during emergency situations.

(6) (a) Rubber-type ammunition may as a general rule only be fired at a distance of more than 30 metres from a person.

(b) If such ammunition is fired at less than 30 metres from a person, the line of fire must be directed at the lower body of the person.

(c) Rubber-type ammunition may not be fired within a building.

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

Amendment of section 40 of Act 111 of 1998

21. Section 40 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) (a) 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.

(b) A child who is a prisoner may only do work for the purposes of training aimed at obtaining skills for his or her development.

(c) A child who is a prisoner may not be subjected to work if the work that is to be performed is inappropriate for the age of the child or if the work places the child's educational, physical, mental, moral or social well-being at risk."; and 5

(b) by the substitution for subsection (4) of the following subsection:

"(4) *(a)* **[The]** Subject to paragraph *(b)*, the amount of the gratuity that sentenced prisoners receive for their labour, the administration of the gratuity and **[their]** the prisoners' conditions of work must be prescribed by regulation. 10

(b) The amount of the gratuity contemplated in paragraph *(a)* must be determined by the Commissioner with the concurrence of the Minister of Finance."

Amendment of section 42 of Act 111 of 1998 15

22. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) At each prison there must be **[a]** one or more Case Management **[Committee]** Committees composed of correctional officials as prescribed by regulation." 20

Amendment of section 45 of Act 111 of 1998

23. Section 45 of the principal Act is hereby amended by the addition of the following subsection:

"(4) If the medical officer considers it necessary to establish the health status of a prisoner at his or her release, the prisoner must undergo a health status examination which may include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act No. 63 of 1977)." 25

Substitution of section 49 of Act 111 of 1998

24. The following section is hereby substituted for section 49 of the principal Act:

"Visitors and communication 30

49. Subject to restrictions which may be **[laid down]** prescribed by regulation, unsentenced prisoners may receive visitors and write and receive letters and communicate telephonically."

Amendment of section 58 of Act 111 of 1998

25. Section 58 of the principal Act is hereby amended by the addition to subsection (1) 35 of the following paragraph, the current subsection becoming paragraph *(a)*:

"*(b)* A Supervision Committee must be managed by correctional officials in the manner prescribed by regulation."

Amendment of section 70 of Act 111 of 1998

26. Section 70 of the principal Act is hereby amended by the substitution for 40 subsection (1) of the following subsection:

"(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— 45

(a) may, depending on the nature and seriousness of the non-compliance—

[(a)](i) reprimand the person;

[(b)](ii) instruct the person to appear before the court, Correctional Supervision and Parole Board or other body which imposed the community corrections; or 50

[(c)](iii) issue a warrant for the arrest of such person; and

(b) must, if he or she is satisfied that the person has a valid excuse for not complying with any such condition or duty, instruct that the community corrections be resumed subject to the same conditions or duties applicable to that person.”.

Amendment of section 73 of Act 111 1998

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27. Section 73 of the principal Act is hereby amended—

(a) by the substitution in subsection (6) for paragraph *(a)* of the following paragraph:

“(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 if no non-parole period was stipulated, 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.”; and

(b) by the substitution in subsection (6)(b) for subparagraph *(v)* of the following subparagraph:

“(v) imprisonment contemplated in section [52(2)] 51 or 52 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.”.

Amendment of section 74 of Act 111 of 1998

28. Section 74 of the principal Act is hereby amended—

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(a) by the deletion in subsection (2) of paragraphs *(c)* and *(d)*;

(b) by the substitution in subsection (2) for paragraph *(e)* of the following paragraph:

“(e) [two officials] one official of the Department nominated by the Commissioner; and”;

(c) by the substitution for subsection (5) of the following subsection:

“(5) [Five] Three 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].”;

(d) by the insertion after subsection (7) of the following subsection:

“(7A) *(a)* A Board may co-opt an official nominated by the National Commissioner of the South African Police Service or an official nominated by the Director-General of the Department of Justice, or both such officials, for a meeting of the Board.

(b) Any such co-opted official may vote at the meeting of the Board.”.

Amendment of section 75 of Act 111 of 1998

29. Section 75 of the principal Act is hereby amended—

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

“(a) subject to the provisions of paragraphs *(b)* and *(c)* and subsection (1A) place a prisoner under correctional supervision or day parole or grant parole and, subject to the provisions of section 52, set the conditions of community corrections imposed on the prisoner;”;

(b) by the insertion after subsection (1) of the following subsections:

“(1A) *(a)* In all cases which involve offences identified in terms of subsection (1B), except where officials of both the South African Police Service and the Department of Justice are on the Board, the Board must request recommendations from the South African Police Service and the Department of Justice.

(b) Such recommendations must be submitted in writing within two months of being requested.

(1B) (a) The Commissioner may, with the concurrence of the National Commissioner of the South African Police Service, the Director-General of the Department of Justice and the National Director of Public Prosecutions, identify offences for purposes of subsection (1A).

(b) The offences contemplated in paragraph (a) must be identified from categories of offences in respect of which sentences of imprisonment in excess of a specified period have been imposed.” 5

Amendment of section 81 of Act 111 of 1998

30. Section 81 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) If the Minister is satisfied that the prison population in general or at a particular prison 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.”; and

(b) by the addition of the following subsection: 15

“(4) In the case of unsentenced prisoners the Minister may release any such prisoner or group of such prisoners subject to such conditions as may be determined by the Minister with the concurrence of the Minister of Justice.”.

Amendment of section 85 of Act 111 of 1998 20

31. Section 85 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(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.”. 25

Amendment of section 89 of Act 111 of 1998

32. Section 89 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection: 30

“(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.”;

(b) by the substitution for subsection (4) of the following subsection: 35

“(4) The Inspecting Judge has the same powers and duties as the Commissioner for the purposes of administrative management and control of employees under his or her authority and may delegate any such power and assign any such duty to an employee of a post level of Deputy-Director or higher.”; and

(c) by the addition of the following subsection: 40

“(5) The conditions of service of such employees are regulated by this Act, but the salaries and allowances of such employees are regulated by the Public Service Act.”.

Substitution of heading to Chapter XI of Act 111 of 1998

33. The following heading is hereby substituted for the heading to Chapter XI of the principal Act: 45

“INTERNAL SERVICE EVALUATION AND ERADICATION AND PREVENTION OF CORRUPTION”.

Amendment of section 95 of Act 111 of 1998

34. Section 95 of the principal Act is hereby amended— 50

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

“(1) The Commissioner must conduct an internal service evaluation by means of internal auditing, performance auditing, inspections and

- investigations to promote the economical and efficient operation of the Department and to ensure that the objectives and principles of this Act are met.”;
- (b) by the deletion in subsection (2) of the word “and” at the end of paragraph (e) and the substitution for paragraph (f) of the following paragraphs: 5
- “(f) suggesting measures to combat theft, fraud, corruption and any other dishonest practices or irregularities; and
- (g) investigating theft, fraud, corruption and any other dishonest practices or irregularities.”; and
- (c) by the insertion after subsection (3) of the following subsection: 10
- “(3A) (a) The Commissioner must establish a unit to deal with matters in terms of subsections (2)(f) and (g) and (3).
- (b) Members of this unit—
- (i) are responsible to initiate disciplinary proceedings resulting from any investigation in terms of subsection (2)(g); and 15
- (ii) may in the manner prescribed by regulation enter and search any departmental premises and seize any departmental record.”.

Amendment of section 96 of Act 111 of 1998

- 35.** Section 96 of the principal Act is hereby amended—
- (a) by the substitution in subsection (3) for paragraph (d) of the following paragraph: 20
- “(d) despite the provisions of paragraph (c), the Commissioner may, subject to the [prescribed] conditions prescribed by regulation, 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”; and 25
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) The provisions relating to the retirement [age] of correctional officials contained in the Correctional Services Act, 1959 (Act No. 8 of 1959), [remains] remain in force unless amended in the Bargaining Council for the Department of Correctional Services in terms of the Labour Relations Act.” 30

Amendment of section 97 of Act 111 of 1998

- 36.** Section 97 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 35
- “(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 [133] 134 of this Act.
- (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.”. 40

Amendment of section 101 of Act 111 of 1998

- 37.** Section 101 of the principal Act is hereby amended by the addition of the following subsection: 45
- “(4) (a) The Commissioner may sell any property seized in terms of this Act or the property of a deceased or escaped prisoner which is in the care of the Department by public auction, if it is not lawfully claimed within six months after being seized or after the death or escape. 50
- (b) The proceeds of the sale may be appropriated in settlement of any claims by the State against the applicable person and the balance, if any, must be paid into the National Revenue Fund.
- (c) If, after the period of six months referred to in paragraph (a), a person proves to the Commissioner that he or she is lawfully entitled to the balance of the proceeds, the balance must be paid to that person.” 55

Amendment of section 106 of Act 111 of 1998

38. Section 106 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) conduct any search contemplated in section 27 [(1)(b), (c) or (f)] (2)(a), (b) or (e);”.

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Amendment of section 117 of Act 111 of 1998

39. Section 117 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Any **[prisoner]** person who—”.

Amendment of section 132 of Act 111 of 1998

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40. Section 132 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[Canteens]** The Commissioner may approve the establishment of 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]** to be conducted on such conditions and in such manner as may be prescribed by regulation, which must include conditions as to the liquidation and distribution of assets on the termination of the business of such canteen.”.

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Amendment of section 134 of Act 111 of 1998

41. Section 134 of the principal Act is hereby amended—

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

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

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(b) by the insertion in subsection (1) after paragraph (o) of the following paragraphs:

“(oA) the manner in which any publication, video or audio material, film or computer program may be drawn from a library in the prison, sent to a prisoner from outside the prison or be used by a prisoner;
(oB) the conditions subject to which a female prisoner may be permitted to have her child with her;”;

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(c) by the substitution in subsection (1) for paragraph (p) of the following paragraph:

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“(p) financial and other support of institutions, social agencies and individuals promoting the social responsibility and human development of prisoners or persons under community corrections, including the establishment of one or more funds to support these objects;”;

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(d) by the substitution in subsection (1) for paragraph (q) of the following paragraph:

“(q) the admission to a prison of **[persons other than correctional officials, custody officials or prisoners]** any person;”;

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(e) by the substitution in subsection (1) for paragraph (z) of the following paragraph:

“(z) the use of weapons other than firearms and non-lethal incapacitating devices, the recording of such use and the training in their use;”;

(f) by the substitution in subsection (1) for paragraph (aa) of the following paragraph:

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“(aa) the reporting procedures when force, including the use of a firearm, is used;”;

- (g) by the substitution in subsection (1) for paragraph (dd) of the following paragraph:
 “(dd) the composition, terms of office of members and procedures for the conducting of meetings of Case Management Committees [**and the designation of the prisons they are to serve**];”;
- (h) by the substitution in subsection (1) for paragraph (ii) of the following paragraph:
 “(ii) the [**establishment,**] management and control of [**a scheme**] the medical scheme established under section 94(1)(b)bis of the Correctional Services Act, 1959 (Act No. 8 of 1959), to provide for medical treatment of correctional officials and other persons entitled thereto, membership of the scheme, membership contributions, rights, privileges and obligations of members, the vesting of assets, rights, liabilities and obligations of the scheme, the disposal of the assets of the fund and generally all matters reasonably necessary for the proper functioning of the scheme;”;
- (i) by the substitution in subsection (1) for paragraph (jj) of the following paragraph:
 “(jj) the [**establishment**] management and control of [**a**] the private fund established under section 94(1)(b)ter of the Correctional Services Act, 1959 (Act No. 8 of 1959), for the purposes of developing and supporting correctional officials or other persons financially or otherwise, the payment of voluntary contributions to the fund, the utilisation of money from the fund in the advancement of its purpose, and generally all matters reasonably necessary for the proper functioning of the fund;”;
- (j) by the insertion in subsection (1) after paragraph (kk) of the following paragraphs:
 “(kkA) the detention of a prisoner in order to search him or her or for the recovery, by normal excretion, of objects swallowed, and the manner in which such searches must be conducted;
 (kkB) types of mechanical restraints which may be used on prisoners, their application and the reporting procedure on their application;
 (kkC) the use of electronic and other monitoring devices and the procedures for their application;
 (kkD) the procedures for the detention of a prisoner sentenced to periodical imprisonment;
 (kkE) the establishment, management and use of canteens and the liquidation and distribution of assets on the termination of their business;
 (kkF) the management and use of canteens established under section 88 of the Correctional Services Act, 1959 (Act No. 8 of 1959), and the liquidation and distribution of assets on the termination of their business;
 (kkG) the management and membership of clubs established in terms of regulation 7A promulgated under the Correctional Services Act, 1959 (Act No. 8 of 1959), and the establishment and membership of new clubs;
 (kkH) the proper performance of its functions by the unit contemplated in section 95(3A) when acting in terms of subsections (2)(f) and (g) and (3) of that section;”;
- (k) by the substitution in subsection (1) for paragraph (ll) of the following paragraph:
 “(ll) generally, all matters, [**considered**] the prescription of which is necessary or expedient for attaining the purpose of this Act, or which must or may be prescribed by regulation in terms of this Act.”;
- (l) by the substitution for subsection (2) of the following subsection:
 “(2) The Commissioner may issue orders, not inconsistent with this Act and the regulations made thereunder, which must be obeyed by all correctional officials and other persons to whom such orders apply, as to—

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| (a) the conditions for and circumstances under which payment to a prisoner, or the taking into safekeeping, release or disposal of money, valuables or other articles belonging to a prisoner, may take place; | |
| (b) the bathing or showering of prisoners; | 5 |
| (c) hygienic requirements of bedding; | |
| (d) the provision of special diet; | |
| (e) the provision of clothing and bedding on admission; | |
| (f) the wearing of attire for religious or cultural purposes; | |
| (g) access to the services of a medical practitioner of the prisoner's choice; | 10 |
| (h) the supply at State expenses of medical assistance devices not including surgical implants; | |
| (i) reports on problems concerning environmental health conditions and health-related issues; | 15 |
| (j) the manner in which the Head of Prison must allow a prisoner to notify his or her spouse, partner or next-of-kin when the prisoner is transferred; | |
| (k) recreational activities to be provided for the benefit of the mental and physical health of prisoners; | 20 |
| (l) the establishment and maintenance of libraries; | |
| (m) the recording of identification particulars of a prisoner; | |
| (n) the taking of the fingerprints and photographs of a prisoner for identification purposes; | |
| (o) the manner in which mechanical restraints are to be applied; | 25 |
| (p) the reporting of incidents and actions taken where non-lethal incapacitating devices were used; | |
| (q) the handling of firearms; | |
| (r) the reporting of firearm use; | |
| (s) general safety measures for handling firearms; | 30 |
| (t) the types of weapons other than non-lethal incapacitating devices and firearms to be used by correctional officials; | |
| (u) the use of batons; | |
| (v) the procedures for the use of pyrotechnical equipment; | |
| (w) amenities to be made available to prisoners; | 35 |
| (x) work which may be performed by a prisoner on Sundays or other days of rest and gratuity for such work; | |
| (y) a discharge report of a prisoner under medical treatment; | |
| (z) the restrictions on amenities for unsentenced prisoners; | |
| (aa) the appointment of correctional officials on probation; | 40 |
| (bb) health and security requirements of an applicant for appointment in the Department; | |
| (cc) the written contract of employment to be provided to every correctional official upon appointment; | |
| (dd) the conditions under which a correctional official may do remunerative work outside the Department; | 45 |
| (ee) the conditions for the issuing, wearing and maintenance of articles of uniform and equipment; | |
| (ff) the termination of service of correctional officials; | |
| (gg) the conditions under which a correctional official may resign from the Department; | 50 |
| (hh) the powers and duties of the Medical Advisory Board; | |
| (ii) categories of leave and deviations from leave conditions; | |
| (jj) the payment of subsistence allowances and the deviations from qualifying conditions; | 55 |
| (kk) the conveyance at State expense of the personal and household effects of a correctional official who is transferred; | |
| (ll) the powers, functions and duties of the Board of Trustees of the Facilities Fund; | |
| (mm) the constitution and performance of functions of a committee to control a departmental canteen; | 60 |
| (nn) the obtaining of information of statistical value and research; | |

- (oo) the conditions under which the Head of Prison must allow certain persons access to the prison;
- (pp) generally, all matters necessary or expedient for the application of this Act or the regulations.”.

Substitution of section 136 of Act 111 of 1998

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42. The following section is hereby substituted for section 136 of the principal Act:

“Transitional provisions

136. (1) Any person serving a sentence of imprisonment immediately before the commencement of Chapters IV, VI and VII is subject to the provisions of the Correctional Services Act, 1959 (Act No. 8 of 1959), relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those Chapters. 10

(2) When considering the release and placement of a prisoner who is serving a determinate sentence of imprisonment as contemplated in subsection (1), such prisoner must be allocated the maximum number of credits in terms of section 22A of the Correctional Services Act, 1959 (Act No. 8 of 1959). 15

(3) (a) Any prisoner serving a sentence of life imprisonment immediately before the commencement of Chapters IV, VI and VII is entitled to be considered for day parole and parole after he or she has served 20 years of the sentence. 20

(b) The case of a prisoner contemplated in paragraph (a) must be submitted to the National Council which must make a recommendation to the Minister regarding the placement of the prisoner under day parole or parole. 25

(c) If the recommendation of the National Council is favourable, the Minister may order that the prisoner be placed under day parole or parole, as the case may be. 30

(4) If a person is sentenced to life imprisonment after the commencement of Chapters IV, VI and VII while serving a life sentence imposed prior to the commencement, the matter must, after the prisoner has served 25 years accumulatively, be referred to the court which imposed the last sentence of life imprisonment for consideration of placement under day parole or parole.”. 35

Substitution of heading to Schedule to Act 111 of 1998

43. The following heading is hereby substituted for the heading of the Schedule to the principal Act:

“**Schedule** 40

LAWS AMENDED BY SECTION [136] 137”.

Amendment of Schedule to Act 111 of 1998

44. The Schedule to the principal Act is hereby amended by the substitution in the third column for item 1 of the following item:

“1. The amendment of section 1 by the substitution for the definition of “Commissioner” of the following definition: 45

“**Commissioner**, means the Commissioner of Correctional Services as defined in section [138] 1 of the Correctional Services Act, 1998, or a person authorized by him or her;”.

Short title

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45. This Act is called the Correctional Services Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES AMENDMENT BILL, 2001

1. The Correctional Services Act, 1998 (Act No. 111 of 1998 — “the Act”) requires that there should be a supportive legal structure in terms of subordinate legislation for the effective application of the Act. When the regulations were drafted it became apparent that certain technical amendments to the Act are needed to ensure the proper operation of the Act. It also became apparent that the structure of the Correctional Supervision and Parole Boards was not financially viable and that amendments in this regard are needed. Suitable amendments in both instances are proposed in the Bill.

2. Furthermore, after a thorough discussion with the Inspecting Judge, and the National Council for Correctional Services, it was realised that the proper placement of a unit to eradicate corruption in the Department of Correctional Services should be with the Department and not the Judicial Inspectorate. Amendments to this effect are therefore proposed in the Bill.

3. It is also proposed in the Bill that the powers to make regulations and issue orders be amplified.

4. Provisions regulating the fate of prisoners serving life sentences also need to be amplified. Suitable amendments in this regard are proposed in the Bill.

FINANCIAL IMPLICATIONS FOR STATE

5. None.

PERSONS/BODIES CONSULTED

6. The National Council for Correctional Services.
The Inspecting Judge.
The Department of Finance.
The Department of Justice.
The South African Police Service.

PARLIAMENTARY PROCEDURE

7. The State Law Advisers and the Department of Correctional Services 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.

Printed by Creda Communications

ISBN 0 621 30941 9