

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 453

25 May 2011

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 5 of 2011: Correctional Matters Amendment Act, 2011.



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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.

(English text signed by the President)
(Assented to 24 May 2011)

ACT

To repeal provisions establishing an incarceration framework introduced by the Correctional Services Amendment Act, 2008; to amend the Correctional Services Act, 1998, so as to amend a definition and insert new definitions; to provide for a new medical parole system; to clarify certain provisions relating to parole; to provide for the management and detention of remand detainees; 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, as amended by section 1 of Act 32 of 2001 and section 1 of Act 25 of 2008

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 “**inmate**” of the following definition:
“ ‘**inmate**’ means any person, whether convicted or not, who is detained in custody in any correctional centre or remand detention facility or who is being transferred in custody or is en route from one correctional centre or remand detention facility to another correctional centre or remand detention facility;”;

(b) by the insertion after the definition of “**non-parole period**” of the following definition:

“ ‘**other body**’ means either—

(a) the National Director of Public Prosecutions or his or her delegate acting in terms of sections 41 or 53(3) of the Child Justice Act, 2008, (Act No. 75 of 2008); or

(b) the Correctional Supervision and Parole Review Board acting under section 77(1) of the Act,
as the case may be;”;

(c) by the insertion after the definition of “**registered nurse**” of the following definitions:

“ ‘**remand detainee**’—

(a) means a person detained in a remand detention facility awaiting the finalisation of his or her trial, whether by acquittal or sentence, if such person has not commenced serving a sentence or is not already serving a prior sentence; and

- (b) includes a person contemplated in section 9 of the Extradition Act, 1962, (Act No. 67 of 1962), detained for the purposes of extradition;”
- ‘remand detention facility’** means a place established under this Act as a place for the reception, detention or confinement of a person liable to detention in custody, and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of detention, protection, treatment or otherwise, and all quarters used by correctional officials in connection with any such remand detention facility, and for the purpose of sections 115 and 117 includes every place used as a police cell or lock-up;
- ‘remand detention official’** means an employee of the Department appointed under section 3(4) at a remand detention facility or transferred to a remand detention facility;” and
- (d) by the insertion after the definition of **“solitary confinement”** of the following definition:
- “‘specialist medical practitioner’** means a person registered in respect of any profession under the Health Professions Act, 1974, (Act No. 56 of 1974), to whom the definition ‘speciality’ applies under that Act;”.

Amendment of section 3 of Act 111 of 1998, as amended by section 2 of Act 32 of 2001

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Department must—
- (a) fulfil the purpose of the correctional system in terms of this Act;
- (b) as far as practicable, be self-sufficient and operate according to business principles; **[and]**
- (c) perform all work necessary for its effective management; and
- (d) manage remand detainees.”.

Amendment of section 5 of Act 111 of 1998, as amended by section 4 of Act 32 of 2001 and section 4 of Act 25 of 2008

3. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “The Minister may by notice in the *Gazette*, establish and review the establishment of correctional centres and remand detention facilities for—”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) (a) Any correctional centre or remand detention facility 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 correctional centre or remand detention facility established to serve more than one district is deemed to be the correctional centre or remand detention facility of each district served by that correctional centre or remand detention facility.
- (b) If there is no correctional centre or remand detention facility in a district an inmate may be detained in a police cell but not for a period longer than seven days **[a month unless a longer period is authorised by the National Commissioner]**”.

Amendment of section 10 of Act 111 of 1998

4. Section 10 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 17 of Act 111 of 1998, as amended by section 3 of Act 25 of 2008

5. Section 17 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 5

“(4) **[Persons awaiting trial or sentence]** Remand detainees must be provided with the opportunities and facilities to prepare their defence.”.

Amendment of section 38 of Act 111 of 1998, as amended by section 30 of Act 25 of 2008 10

6. Section 38 of the principal Act is hereby amended—

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

“(h) allocation to a specific correctional centre; **[and]**”;

(b) by the substitution in subsection (1) for paragraph (i) of the following paragraph: 15

“(i) needs regarding reintegration into the community;”;

(c) by the addition in subsection (1) after paragraph (i) of the following paragraphs:

“(j) restorative justice requirements; and 20

(k) vulnerability to sexual violence and exploitation.”.

Amendment of section 39 of Act 111 of 1998, as amended by section 31 of Act 25 of 2008

7. Section 39 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 25

“(a) Subject to the provisions of paragraph (b), a person who receives more than one sentence of incarceration or receives additional sentences while serving a term of incarceration, must serve each such sentence, the one after the expiration, setting aside or remission of the other, in such order as the National Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs such sentences shall run concurrently but— 30

(i) any determinate sentence of incarceration to be served by any person runs concurrently with a life sentence or with a sentence of incarceration to be served by such person in consequence of being declared **[an habitual criminal or]** a dangerous criminal; 35

(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]** 40

(iii) no placement or release of a dangerous criminal may take place other than in terms of section 286B of the Criminal Procedure Act; and

(iv) any determinate sentence of incarceration to be served by any person runs concurrently with a sentence of imprisonment to be served by such person in consequence of a person being declared a habitual criminal: Provided that where the determinate sentence is longer than 15 years or where such sentence is imposed after a person is declared a habitual criminal, the balance of such determinate sentence must be served after the term of 15 years has been completed.”; and 45 50

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

“(3) The date of expiry of any sentence of incarceration being served by a sentenced offender who escapes from lawful custody or is extradited in terms of the Extradition Act, 1962 (Act No. 67 of 1962), and returns to the Republic or who absconds from the system of community corrections 55

or who is unlawfully discharged is postponed by the period by which such sentence was interrupted.”.

Amendment of section 42 of Act 111 of 1998, as amended by section 22 of Act 32 of 2001 and substituted by section 34 of Act 25 of 2008

8. Section 42 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph: 5

“(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 offender is serving a term of incarceration 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; 10
- (ii) the previous criminal record of such offender;
- (iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such offender; 15
- (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 sentenced offender who has been declared a habitual criminal which indicates that—**
 - (aa) there is a reasonable probability that such an offender will in future abstain from crime and lead a useful and industrious life; or** 20
 - (bb) such an offender is no longer capable of engaging in crime; or**
 - (cc) for any other reason, it is desirable to place such an offender on parole]** the assessment results and the progress with regard to the correctional sentence plan contemplated in section 38; 25
- (vi) the possible **[re-placement]** placement of **[such]** an offender 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 an offender’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; 30 35
- (vii) the possible placement of such sentenced offender on day parole **[or on]**, parole or medical parole, and the conditions for such placement; **[and]**
- (viii) **[such other matters as the Correctional Supervision and Parole Board may request]** a certified copy of the offender’s identity document and, in the case of a foreign national, a report from the Department of Home Affairs on the residential status of such offender; 40
- (ix) the possible placement under correctional supervision or release of an offender who has been declared a dangerous criminal, in terms of section 286B(4)(b) of the Criminal Procedure Act; and 45
- (x) such other matters as the Correctional Supervision and Parole Board may request; and”.