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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2434.

17 December 1993

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

Hierby word bekend gemaak dat die Waarnemende Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

— 173 of 1993: Correctional Services Third Amendment Act, 1993.

No. 173 van 1993: Derde Wysigingswet op Korrektiewe Dienste, 1993.

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.

ACT

To amend the Correctional Services Act, 1959, so as to provide for facilities in prisons where prisoners may purchase merchandise; to provide that the unauthorized removal of a prisoner from a prison constitutes an offence; to further define the powers of parole boards; to regulate the detention of prisoners in single cells; and to regulate the application of mechanical means of restraint; and to provide for matters connected therewith.

*(English text signed by the Acting State President.)
(Assented to 8 December 1993.)*

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Insertion of section 22B in Act 8 of 1959

1. The following section is hereby inserted in the Correctional Services Act, 1959 (hereinafter referred to as the principal Act), after section 22A: 5

“Establishment of facilities for purchases by prisoners

22B. (1) The Commissioner may by way of such privileges and indulgences as he may grant to prisoners under section 22, establish facilities in prisons where prisoners may purchase merchandise.

(2) A canteen referred to in section 88 or any person or other institution may compete to sell merchandise within the facilities referred to in subsection (1), on such conditions and in accordance with such procedures as may be prescribed by the Commissioner. 10

(3) A person or institution authorized by the Commissioner to sell merchandise may obtain a place or space within a prison, if it is necessary for the conduct of his or its business, at a tariff determined by the Commissioner after consultation with the Department of State Expenditure.” 15

Amendment of section 48 of Act 8 of 1959, as amended by section 1 of Act 54 of 1979

2. Section 48 of the principal Act is hereby amended by the addition of the word “or” at the end of paragraph (c) of subsection (1), and the insertion after the said paragraph of the following paragraph: 20

“(d) in any manner collaborates with a member of the Department or any other person, whether under the supervision of such member or person or not, to leave the prison without lawful authority or under false pretences.”

Insertion of section 48A in Act 8 of 1959

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3. The following section is hereby inserted in the principal Act after section 48:

“Unauthorized removal of prisoner from prison

48A. Any person who—

- (a) without lawful authority removes a prisoner from a prison or allows him to leave the prison; or 10
- (b) conspires with a prisoner or any other person to remove a prisoner from a prison without lawful authority or who allows him to leave prison, 15
- shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years.”

Amendment of section 63 of Act 8 of 1959, as substituted by section 21 of Act 68 of 1993

4. Section 63 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (i) of paragraph (b) of the following subparagraph: 20

“(i) the placement of such prisoner under correctional supervision by virtue of a sentence contemplated in section 276(1)(i) [276A(3)(a)(ii)] or 287(4)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or by virtue of the conversion of such prisoner’s sentence into correctional supervision under section 276A(3)(e)(ii) or 287(4)(b) of the said Act and the period for which and the conditions on which such prisoner may be so subjected to correctional supervision: Provided that for the purposes of such recommendations a prisoner’s date of release contemplated in section 276A(3)(a)(ii) of the Criminal Procedure Act, 1977, shall be deemed to be the earliest date on which a prisoner may, in terms of this Act, be considered for placement on parole or the date on which the prisoner may be released upon the expiration of his sentence, whichever occurs first; or”; and 25 30

(b) by the addition of the following subsection, the existing section becoming subsection (1): 35

“(2) A parole board shall in terms of section 286B of the Criminal Procedure Act, 1977, in respect of each prisoner serving an indeterminate sentence after having been declared a dangerous person, having regard to the nature of the offence and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department, submit a report to the court, on the date determined by the court, with regard, *inter alia*, to the conduct, adaptation, training, aptitude, industry and physical and mental state of such prisoner and the possibility of his relapse into crime.” 40 45

Repeal of section 78 of Act 8 of 1959, as amended by section 18 of Act 58 of 1978

5. Section 78 of the principal Act is hereby repealed.

Substitution of section 79 of Act 8 of 1959, as amended by section 22 of Act 68 of 1993

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6. The following section is hereby substituted for section 79 of the principal Act:

“Detention of prisoner in single cell

79. (1) In every prison there shall be provided, where practicable and necessary, sufficient single cells of a design approved by the Commissioner, and such cells shall be used for the detention of a prisoner—

- (a) for the application of section 23(2) if the Commissioner or a commissioned officer designated by him orders such detention;
- (b) upon the written request of a prisoner, for such period of time as may be approved by the Commissioner;
- (c) in terms of any scheme of classification or treatment or otherwise, for such period of time as may be ordered by the Commissioner;
- (d) to ensure that disciplinary measures imposed on a prisoner in terms of section 51 or 54, can be applied effectively but only for the periods necessary to apply the disciplinary measures;
- (e) if it is desirable in the interests of the administration of justice;
- (f) if such detention is prescribed by the medical officer on medical grounds;
- (g) when a prisoner has displayed violence or is threatening violence or is threatened with violence; and
- (h) if a prisoner has been recaptured after escape and there is a reasonable suspicion that such prisoner will again escape or in respect of whom there is a reasonable suspicion that he is contemplating escape.

(2) The detention of a prisoner in a single cell shall take place in the manner prescribed by the Commissioner: Provided that such detention shall under no circumstances be applied as a disciplinary measure.”

Substitution of section 80 of Act 8 of 1959

7. The following section is hereby substituted for section 80 of the principal Act:

“Application of mechanical means of restraint

80. (1) When a prisoner is detained in a single cell in terms of section 79 and it is reasonably necessary in the interests of—

- (a) the safety of such prisoner;
- (b) the safety of other prisoners;
- (c) the safety of members of the Department;
- (d) the prevention of damage to any property; or
- (e) the prevention of such prisoner’s escape,

the head of the prison may order that prisoner to be subjected to an approved mechanical means of restraint for such period as such head may consider necessary, but which shall not exceed 30 days.

(2) The head of a prison who issues an order under subsection (1) shall immediately record the particulars thereof, and if such head is not a commissioned officer, he shall without delay send notice of his action to his commander.

(3) If the prisoner is not satisfied with the decision taken under subsection (1) he may, after the reasons for the decision have been made known to him, lodge a complaint or request in the manner prescribed by regulation.

(4) If a prisoner has indicated in terms of subsection (3) that he is not satisfied with the decision contemplated in subsection (1), the Commissioner may, after having considered the verbal or written remarks of the prisoner and the head of the prison, ratify, amend, set aside or replace that decision: Provided that any amendment or replacement of such decision by the Commissioner shall not adversely affect the prisoner: Provided further that the application of the restraint shall not be suspended pending the decision of the Commissioner.

(5) (a) If it is necessary to extend the period of restraint ordered under subsection (1) the head of the prison shall, before the expiration of that period, make a report to the Commissioner stating the facts and his recommendation.

(b) Upon receipt of the said report and recommendation, the Commissioner may order the extension of the period of restraint for a further period not exceeding 60 days, but no such restraint shall exceed a period of 90 days without an order under the hand of the Minister. 5

(6) The use of any mechanical means of restraint shall under no circumstances be applied as a disciplinary measure.” 10

Short title and commencement

8. This Act shall be called the Correctional Services Third Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. 15