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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1108.

25 June 1993

No. 1108.

25 Junie 1993

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

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

No. 68 of 1993: Correctional Services Amendment Act, 1993.

No. 68 van 1993: 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 define or further define certain expressions and to delete certain definitions; to regulate the structure of institutional committees and parole boards; to provide for the utilization of experts who are not members of the Department; to regulate the promotion and transfer of members; to provide for the granting of monetary or other rewards to persons who are not members of the Department but who promote the interests of the Department; to further regulate the granting and withdrawal of prisoners' privileges; to regulate the earning of credits by prisoners; to provide for the recapture of prisoners who were released erroneously; to regulate disciplinary hearings of prisoners by institutional committees; to define the powers, functions and duties of correctional boards, parole boards, institutional committees and the National Advisory Council on Correctional Services; to regulate the placement of prisoners on parole; to define the powers of the State President and the Minister with regard to special releases and remissions of sentence; to provide for special measures to reduce the prison population; to regulate the placement on parole or release of prisoners on medical grounds; to regulate the use of isolation cells; to authorize the payment of boarding fees by prisoners on daily parole; to extend the power of the Minister to delegate; to provide for the regulation of labour relations in the Department; and to empower the Minister to make regulations regarding the general administration and management of prisons, the manner in which certain sentences are to be served and the attendance of witnesses at Departmental hearings; to amend the Prisons Amendment Act, 1978, so as to delete obsolete expressions; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 17 June 1993.)*

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

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985, section 1 of Act 92 of 1990 and section 1 of Act 122 of 1991

1. Section 1 of the Correctional Services Act, 1959 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of "correctional supervision" of the following definition:
 " 'credits' means the days and months contemplated in section 22A(2);"
- (b) by the insertion after the definition of "Department" of the following definition:
 " 'determinate sentence' means a sentence of imprisonment for a definite period;"
- (c) by the insertion after the definition of "hospital prison for psychopaths" of the following definition:
 " 'indeterminate sentence' means a sentence of imprisonment for an indefinite period;"
- (d) by the insertion after the definition of "National Advisory Council" of the following definitions:
 " 'parole' means the conditions under which a prisoner may be placed in terms of section 65;
 'parole board' means a parole board contemplated in section 5C;"
- (e) by the deletion of the definition of "President's patient";
- (f) by the substitution in subparagraph (iii) of paragraph (a) of the definition of "prisoner" for the expression "President's patient" of the expression "State patient";
- (g) by the deletion of the definition of "release on parole"; and
- (h) by the insertion after the definition of "reserve force" of the following definition:
 " 'State patient' means a State patient as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);"

Amendment of section 4 of Act 8 of 1959, as substituted by section 48 of Act 70 of 1968 and amended by section 14 of Act 62 of 1973, section 31 of Act 97 of 1986 and section 4 of Act 122 of 1991

2. Section 4 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subject to the provisions of this Act the Minister may, and shall if ordered thereto by the State President,

[(a) promote; or

(b)] discharge, dismiss or reduce in rank, any officer."

Amendment of section 5A of Act 8 of 1959, as inserted by section 3 of Act 22 of 1980 and amended by section 6 of Act 122 of 1991

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

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

"(2) An institutional committee shall consist of so many members **[who may be members and non-members]** of the Department as the Commissioner may determine and of whom one **[of the former]** shall be designated by the Commissioner as chairman of that committee."

(b) by the deletion of subsection (4); and

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

"(5) Any member of a correctional board or of a parole board may attend any meeting of the institutional committee at the prison where such correctional board or parole board is appointed, but cannot vote on a matter before the institutional committee."

Insertion of section 5C in Act 8 of 1959

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

"Parole boards

5C. (1) The Commissioner shall appoint one or more boards, to be styled parole boards, to perform the functions and duties entrusted to or imposed upon a parole board by or under this Act.

(2) A parole board shall consist of so many members, who may be

members or non-members of the Department, as the Commissioner may determine and of whom—

(a) one shall be designated by the Commissioner as chairman of that board; and

(b) at least one shall in respect of each prisoner who appears before such board, be a member of the institutional committee at the prison where the prisoner in question is being detained.

(3) A member of a parole board shall hold office for such period and on such conditions as the Commissioner may determine.

(4) The members of a parole board who are not in the full-time service of the State, may receive such remuneration and allowances as the Minister may, on the recommendation of the Commission for Administration, determine with the concurrence of the Minister of State Expenditure.

(5) Any member of a correctional board may attend any meeting of the parole board at the prison where such correctional board is appointed, but may not vote on a matter before the parole board.”

Substitution of section 7 of Act 8 of 1959, as substituted by section 1 of Act 6 of 1975

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

“Ministers of religion, psychologists, social workers, educationists and other persons

7. (1) Apart from commissioned officers appointed under section 4(1) and members of the Department appointed under section 8 who hold posts as chaplains, psychologists, social workers or educationists on the fixed establishment of the Department, the Commissioner may from time to time appoint, as temporary correctional officials or voluntary workers, one or more ministers of religion, psychologists, social workers, educationists or other suitable persons, to render such services and to perform such functions, in respect of any prisoner or group of prisoners or on behalf of a probationer, as the Commissioner may determine.

(2) A minister of religion, psychologist, social worker, educationist or other person contemplated in subsection (1) shall be paid the allowances determined by the Commissioner on the recommendation of the Commission for Administration and after consultation with the Department of State Expenditure: Provided that any other remuneration paid by the State to such a person shall not be affected by this provision.”

Insertion of section 9G in Act 8 of 1959

6. The following section is hereby inserted in the principal Act after section 9F:

“Filling of posts

9G: Subject to the provisions of this Act, the Commissioner shall decide on the appointment of persons and the promotion and transfer of members of the Department having regard to the personnel requirements of the Department prescribed under this Act: Provided that—

(a) the promotion of a commissioned officer of or above the rank of brigadier and the transfer of a commissioned officer of or above the rank of Deputy Commissioner, shall be subject to the approval of the Minister;

(b) no person who qualifies for the relevant appointment, transfer or promotion shall be favoured or prejudiced;

(c) only the qualifications, level of training, relative merit, skill and suitability of the persons who qualify for the relevant appointment, promotion or transfer, shall be taken into account; and

- (d) the Commissioner may exempt a member who is exceptionally skilled or who has special qualifications or who renders exceptional service or who has successfully completed a prescribed departmental training course, from such personnel requirements in order to promote or transfer him."

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Amendment of section 19 of Act 8 of 1959, as amended by section 8 of Act 92 of 1990

7. Section 19 of the principal Act is hereby amended by the addition of the following subsection:

- "(3) The Commissioner may with the approval of the Minister award a monetary or other reward to a person who performs an act which promotes the interests of the Department or of a member of the Department and which justifies such award."

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Substitution of section 22 of Act 8 of 1959, as substituted by section 4 of Act 58 of 1978

8. Section 22 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 15

"(2) The Commissioner may [in his discretion]—

- (a) grant such privileges and indulgences as he may determine to any prisoner;
- (b) [notwithstanding anything to the contrary contained in any law,] withdraw or amend any privilege or indulgence granted in terms of paragraph (a) to any prisoner [without furnishing any reason and without hearing such prisoner or any other person] if it is in the interests of the administration of prisons."

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Insertion of section 22A in Act 8 of 1959

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9. The following section is hereby inserted in the principal Act after section 22:

"Allocation of credits

22A. (1) A prisoner may earn credits, to be awarded by an institutional committee, by observing the rules which apply in the prison and by actively taking part in the programmes which are aimed at his treatment, training and rehabilitation: Provided that the institutional committee may, in allocating credits, take into account any other factor which may be relevant to the prisoner in question: Provided further that—

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- (a) a prisoner may not earn credits amounting to more than half of the period of imprisonment which he has served;
- (b) credits shall be awarded at the intervals referred to in section 62(1);
- (c) a prisoner sentenced to imprisonment for up to and including six months shall, unless the institutional committee awards him fewer credits, be deemed to have been awarded the maximum number of credits.

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(2) The number of days and months earned by a prisoner as credits may be taken into account in determining the date on which a parole board may consider the placement of such prisoner on parole.

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(3) In the calculation of credits, a fraction of a day shall be regarded as a full day."

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Amendment of section 27 of Act 8 of 1959, as amended by section 4 of Act 88 of 1977, section 6 of Act 58 of 1978 and section 8 of Act 104 of 1983

10. Section 27 of the principal Act is hereby amended by the substitution in 50

paragraph (d) of subsection (2) for the expression "President's patient" wherever it occurs of the expression "State patient".

Amendment of section 30 of Act 8 of 1959, as amended by section 3 of Act 6 of 1985

11. Section 30 of the principal Act is hereby amended by the deletion of subsection (5). 5

Amendment of section 32 of Act 8 of 1959, as amended by section 14 of Act 101 of 1969

12. Section 32 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) When a person receives more than one sentence of imprisonment or receives additional sentences while serving a term of imprisonment, each such sentence shall be served the one after the expiration, setting aside or remission of the other in such order as the Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs that such sentences shall run concurrently: **Provided that any such sentence of imprisonment or additional sentence of imprisonment in which solitary confinement with or without spare diet is imposed, shall be served first:** **Provided [further]—** 10 15

(a) that any determinate sentence of imprisonment to be served by any person shall run concurrently with a life sentence or with an indeterminate sentence of imprisonment to be served by such person in consequence of being declared an habitual criminal; and 20
(b) that one or more life sentences and one or more such indeterminate sentences, or two or more life sentences, or two or more such indeterminate sentences, shall also run concurrently. 25

(3) Subject to the provisions of the **[second]** proviso to subsection (2), the date of expiry of any sentence of imprisonment being served by a prisoner who escapes from lawful custody or who is **[unlawfully discharged]** erroneously released shall, subject to the provisions of section 32A(3), upon his recapture or rearrest be postponed for a period equal to the period by which such sentence was interrupted by reason of such escape or **[discharge] release**." 30

Insertion of section 32A in Act 8 of 1959

13. The following section is hereby inserted in the principal Act after section 32:

"Rearrest of prisoner released erroneously 35

32A. (1) If the Minister reasonably suspects that a prisoner has been released from a prison erroneously, whether in terms of any law or not, he may issue a warrant for the rearrest of such prisoner, which warrant may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and shall serve as authority for the detention of such prisoner in a prison for a period not exceeding 72 hours. 40

(2) During the period of such prisoner's detention as contemplated in subsection (1), the Minister shall submit all relevant documents including those submitted by the prisoner, if any, to a judge in chambers: **Provided that if the period of 72 hours referred to in subsection (1) expires on a day on which no such judge is available, the said period shall be deemed to expire at four o'clock in the afternoon of the next succeeding day on which such judge is available.** 45

(3) If such judge finds that such prisoner was erroneously released, 50

he may order the prisoner to serve the unexpired portion of his sentence as contemplated in section 32(3) in full or partially.”

Repeal of section 38 of Act 8 of 1959

14. Section 38 of the principal Act is hereby repealed.

Repeal of section 39 of Act 8 of 1959

15. Section 39 of the principal Act is hereby repealed.

Amendment of section 51 of Act 8 of 1959

16. Section 51 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsections:

“(2) A magistrate shall, upon conviction of such prisoner in respect of any such contravention or non-compliance, have jurisdiction to impose any penalty specifically prescribed by this Act or any **[punishment] disciplinary measure** which **[any commissioned officer] an institutional committee [might lawfully have imposed] could**, under subsection **[(2)] (13)** of section 54, have made applicable to a prisoner, and shall have special jurisdiction to sentence the offender in lieu of or in addition to any such **[punishment] disciplinary measure—**

- (a) to undergo imprisonment for a period not exceeding six months; or
 (b) **[to be kept in solitary confinement in an isolation cell with or without light labour for a period not exceeding forty-two days, twenty eight days of which may be ordered to be passed on reduced diet: Provided that no continuous period passed on reduced diet shall exceed fourteen days, and that at least fourteen days shall elapse between one period passed on reduced diet and another such period] to pay partial or full compensation for any damage caused by the misdemeanour of which he has been found guilty: Provided that the magistrate may suspend in the operation of any penalty imposed in terms of this subsection, or any part of that penalty, for a period not exceeding three years on any condition relating to good conduct or otherwise.**

(3) No person shall be permitted to attend any court held at a prison or at a place designated in terms of subsection (1) unless he is a witness summoned to attend the trial thereat or is specially authorized to attend by the magistrate presiding over that court, or unless he has received a special authority to attend from the Commissioner: Provided that the accused shall in all cases at any hearing be entitled to have present, and to be represented by, his legal adviser.

Substitution of section 54 of Act 8 of 1959, as amended by section 18 of Act 75 of 1965, section 5 of Act 9 of 1971, section 12 of Act 58 of 1978, section 5 of Act 22 of 1980 and section 14 of Act 104 of 1983

17. The following section is hereby substituted for section 54 of the principal Act:

“Disciplinary hearing by institutional committee of contravention of regulations by prisoner

54. (1) An institutional committee may conduct a disciplinary hearing at a prison or at a place designated by the Commissioner for that purpose, against any prisoner (hereinafter referred to as the accused) for any alleged contravention of or failure to comply with any provision of any regulation, whether such contravention or non-compliance is alleged to have taken place within or outside a prison.

(2) Apart from the minutes contemplated in subsection (3), no record of the proceedings shall be kept.

(3) The chairman of the institutional committee shall keep minutes

or cause minutes signed by him to be kept containing particulars of the offence, verdict, reasons for the verdict and disciplinary measures imposed.

(4) If, as a result of the absence or incapacity of the chairman or one or more members of an institutional committee, only one member of the committee which commenced hearing the proceedings is available to complete a hearing in terms of this section, such hearing shall commence *de novo* before a new committee consisting of at least two members.

(5) Subject to the provisions of this section, the rules of the law of evidence shall not apply to the proceedings in terms of this section and an institutional committee may ascertain any relevant fact in such manner as it may deem fit.

(6) Evidence to prove or to disprove any question in issue may be submitted in writing or orally.

(7) No examination or cross-examination by an accused shall be allowed except with the consent of the chairman, but the institutional committee shall proceed inquisitorially to ascertain the relevant facts, and to that end the institutional committee may interrogate the accused or a witness at any stage of the proceedings.

(8) (a) The accused may, with the permission of the chairman of the institutional committee, call one or more witnesses.

(b) The chairman referred to in paragraph (a) shall have the power to decide that sufficient evidence has been adduced on which a decision can be arrived at, and to order that no further evidence shall be adduced: Provided that the accused shall in every case be afforded the opportunity to put his case.

(9) No person shall testify or be interrogated before an institutional committee unless the prescribed oath has been administered to him or the prescribed affirmation has been accepted from him in the presence of the institutional committee.

(10) No legal representation shall be allowed during the proceedings.

(11) Upon completion of the proceedings, an institutional committee may find such accused guilty if it is satisfied beyond reasonable doubt that the accused has committed the offence in question.

(12) If found guilty the accused shall be given an opportunity to address the institutional committee with regard to mitigation of the disciplinary measures to be imposed on him, which address shall be noted *verbatim*.

(13) Upon conviction of any accused of a contravention contemplated in this section an institutional committee may impose a reprimand or may deprive the accused of one or more privileges or indulgences for a period not exceeding two months: Provided that—

(a) such deprivation may be suspended for a period not exceeding one year on the conditions laid down by such committee;

(b) the accused shall at all times be entitled to maintain his family ties; and

(c) the classification of a prisoner in terms of section 22(1)(b) shall not, as a disciplinary measure imposed under this section, be altered in any way.

(14) If, during the proceedings, the accused acts in such a way as to cause the continuation of the proceedings in his presence to be impracticable, the chairman of the institutional committee may order that he be removed and that the proceedings continue in his absence.

(15) No person shall be permitted to attend the proceedings at a prison or at a place designated in terms of this section for the hearing of a disciplinary offence, unless he is a witness summoned to attend the

proceedings thereat or is specially authorized to attend by the chairman of the institutional committee presiding over those proceedings, or by the Commissioner.

(16) No person whose mental state is being investigated in terms of section 30 of the Mental Health Act, 1973 (Act No. 18 of 1973), or who is suspected of being mentally ill, shall be regarded as an accused for the purposes of this section until a certificate is issued in terms of the aforementioned Act which indicates that the accused is mentally competent. 5

(17) (a) Deliberations by the members of the institutional committee to determine the verdict as well as suitable disciplinary measures shall take place behind closed doors. 10

(b) A decision of the majority of the members who heard the matter shall be the decision of the institutional committee, and in the event of an equality of votes the chairman shall in addition to his deliberative vote have a casting vote." 15

Repeal of section 56 of Act 8 of 1959

18. Section 56 of the principal Act is hereby repealed.

Amendment of section 57 of Act 8 of 1959

19. Section 57 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

"(1) Any person summoned as a witness at a trial under section 50, 51 or 53, [or fifty-four] at a disciplinary hearing under section 54 or at an enquiry or investigation under section 13 or 55 to give evidence or to produce any document or thing which in criminal proceedings in a magistrate's court he could be compelled to produce, and who fails to attend such trial or such enquiry or investigation or to produce such document or thing or to answer any question lawfully put to him thereat, shall be guilty of an offence and liable on conviction before a magistrate's court to such penalty as he would have been liable to if he had failed upon lawful summons to attend any trial at the magistrate's court of the district in which the trial or enquiry or investigation is held, or being a witness at a trial before a magistrate's court, had refused to answer any question lawfully put to him thereat." 25 30

Substitution of section 58 of Act 8 of 1959 35

20. The following section is hereby substituted for section 58 of the principal Act:

"Trial procedure at prisons

58. (1) Save as is provided in subsections (2) and (3), the proceedings at any trial under this Act, other than a hearing contemplated in section 54, at a prison or at a place designated by the Commissioner for the trial of any offence or other contravention shall be in the manner and form, as nearly as practicable, as in summary proceedings in a magistrate's court at the hearing and determination of criminal cases. 40 45

(2) No person shall be permitted to attend any court held at a prison or at a place so designated for [the] a trial [of any offence or other contravention] contemplated in subsection (1), unless he is a witness summoned to attend the trial thereat or is specially authorized to attend by the commissioned officer or magistrate presiding over that court, or has received a special authority to attend from the Commissioner: Provided that the accused shall in all cases at any such hearing be entitled to have present, and to be represented by, his legal adviser. 50

(3) Failure of the accused to attend the hearing contemplated in subsection (1) either personally or through his legal adviser, shall not invalidate the proceedings.”

Substitution of Chapter VI of Act 8 of 1959

21. The following chapter is hereby substituted for Chapter VI of the principal Act: 5

“CHAPTER VI

POWERS, FUNCTIONS AND DUTIES OF CORRECTIONAL
BOARDS, PAROLE BOARDS, INSTITUTIONAL COMMIT-
TEES AND THE NATIONAL ADVISORY COUNCIL, AND 10
RELEASE AND PLACEMENT OF PRISONERS ON PAROLE

(i) Powers, functions and duties of correctional boards, parole boards, institutional committees and the National Advisory Council

Powers, functions and duties of correctional boards

61. A correctional board may exercise the powers and shall perform 15
the functions and duties which the Minister may from time to time confer upon or assign to such board and shall—

- (a) take such steps as may be necessary for the effective reintegration of released prisoners and probationers into the community;
- (b) extend and promote the community's interests and involvement in correctional matters; 20
- (c) make suggestions to the Minister regarding any matter which ought to be considered by the National Advisory Council;
- (d) advise the Minister regarding the most cost-effective running of a region in which such board is involved; 25
- (e) discuss any matter connected with the effective functioning of the Department and make suggestions in that regard to the regional commissioner or commander of the area concerned.

Powers, functions and duties of institutional committees

62. (1) An institutional committee shall, in respect of each prisoner 30
under its jurisdiction except a prisoner sentenced to imprisonment for a period not exceeding six months unless otherwise ordered by the Commissioner, having regard to any remarks made by the court in question at the time of the imposition of sentence if made available to the Department, and at such intervals (which shall not be longer than 35
six months) as the Commissioner may determine, after consideration of the prisoner's criminal history, sentence, personal circumstances, behaviour and adaptation as well as his co-operation in the prison—

- (a) make decisions with regard to the credits to be awarded to him, his treatment, training and classification and the regulation of his conduct according to prescribed programmes, classifications and procedures; 40
- (b) make recommendations to the Commissioner with regard to matters which are brought to the attention of the committee by a prisoner during his appearance before such committee and which fall outside the committee's powers; and 45
- (c) exercise the other powers and perform the other functions and duties prescribed by regulation.

(2) If a prisoner is not satisfied with the decision or recommendation of the institutional committee, he may submit a complaint or request 50
in the manner prescribed by regulation after the reasons for the decision or recommendation have been made known to him.

(3) If a prisoner has, in terms of subsection (2), indicated that he is not satisfied with the decision of the institutional committee, the Commissioner may, after having obtained and considered the verbal or written remarks of the prisoner and the institutional committee, ratify, amend, declare null and void or replace a decision of the institutional committee if it is necessary in the interests of the treatment, training, rehabilitation or welfare of such prisoner or for the discipline, good order or safety of the prison in question: Provided that any amendment or replacement of such decision by the Commissioner shall not adversely affect the prisoner.

Powers, functions and duties of parole boards

63. A parole board shall, in respect of each prisoner under its jurisdiction serving an indeterminate sentence or a sentence of imprisonment in excess of six months or in respect of whom a special report is required by the Minister or the Commissioner 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, and at the times and under the circumstances determined by the Commissioner or when otherwise required by the Minister or the Commissioner—

- (a) submit a report to the Commissioner or to the Minister, as the case may be, 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;
- (b) together with the report on each prisoner submitted in terms of paragraph (a), make recommendations to the Commissioner regarding—
 - (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
 - (ii) the placement of such prisoner on parole in terms of section 65 or on daily parole in terms of section 92A and the period for which, the supervision under which and the conditions on which such prisoner should be so placed; and
- (c) exercise such other powers and perform such other functions and duties as may be prescribed by regulation.

Powers, functions and duties of National Advisory Council

64. The National Advisory Council may of its own accord, but shall when so ordered by the Minister, advise the Minister regarding—

- (a) the general policy which ought to be followed in respect of—
 - (i) correctional supervision and matters in connection therewith;

- (ii) the detention and treatment of prisoners;
 - (iii) the placement of prisoners on parole;
 - (iv) the release of prisoners;
 - (v) the placement of prisoners on daily parole;
 - (vi) the efficient and most cost-effective management of the Department;
- (b) the release or the placement of a prisoner on parole or on daily parole, the placement of a prisoner under correctional supervision or the conversion into correctional supervision of a prisoner's sentence, if a particular case has been submitted to the Minister;
 - (c) the reintegration of prisoners and probationers into the community;
 - (d) the assimilation into the labour force of prisoners who have been placed on parole or released and of probationers;
 - (e) the generation of revenue by the Department; and
 - (f) any other matter which is in the interests of the efficient running of the Department.
- (ii) *Release of prisoners and placement of prisoners on parole, special remission of sentence and special measures for the reduction of the prison population*

Release of prisoners and placement of prisoners on parole

65. (1) A prisoner shall be released upon the expiration of the term of imprisonment imposed upon him.
- (2) A prisoner may, in accordance with the provisions of this section after the report submitted by the parole board in terms of section 63 has been studied, be placed on parole before the expiration of his term of imprisonment if he accepts the conditions of such placement.
- (3) (a) A placement contemplated in subsection (2) shall be subject to the conditions mentioned in the warrant for such placement and shall extend for the period between the date of such placement and the expiration of the term of imprisonment.
- (b) (i) The Commissioner may at any time cancel or amend any condition in respect of the placement of a prisoner on parole, including those contemplated in paragraph (a) and in sections 66, 67 and 69, or add new conditions if it is in the interests of the prisoner's treatment, rehabilitation or integration into the community or in the interests of the community.
- (ii) Before acting in terms of subparagraph (i) the Commissioner shall make the reasons for the proposed action known to the prisoner and shall afford him an opportunity to be heard in regard thereto.
- (iii) If the prisoner does not accept the amended conditions, his placement on parole shall be cancelled, after which he shall be detained in a prison for the unexpired period of his sentence of imprisonment: Provided that the Commissioner may at a later date place such prisoner on parole once more should the prisoner accept the amended conditions.
- (c) If the Commissioner is satisfied that a prisoner has, during the period of parole, failed to observe any condition of such parole, he may issue a warrant for the arrest of that prisoner, which may be executed by any peace officer defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which shall serve as authority for the detention of the prisoner until the Commissioner has heard the prisoner and has had sufficient opportunity to hear other evidence in this regard, which detention shall not exceed 72 hours.
- (d) If, after he has ascertained all the relevant facts, the Commis-

sioner is still satisfied that the prisoner has contravened a condition of his parole, he may order that the prisoner's placement on parole be withdrawn partially or completely and that the prisoner be detained for a period not exceeding the unexpired portion of his sentence of imprisonment, calculated as from the date on which he contravened the condition. 5

(4) (a) A prisoner serving a determinate sentence or any of the sentences contemplated in subparagraphs (ii) and (iii) of paragraph (b) shall not be considered for placement on parole until he has served half of his term of imprisonment: Provided that the date on which consideration may be given to whether a prisoner may be placed on parole may be brought forward by the number of credits earned by the prisoner. 10

(b) A person who has under any law been sentenced to—

- (i) periodical imprisonment, shall be detained periodically in a prison in the manner prescribed by regulation; 15
- (ii) imprisonment for corrective training, shall be detained in a prison for a period of four years;
- (iii) imprisonment for the prevention of crime, shall be detained in a prison for a period of eight years; 20
- (iv) an indeterminate sentence, by virtue of his having been declared an habitual criminal, shall be detained in a prison until, after a period of at least seven years, he is placed on parole.

(5) Upon receipt of a report from a parole board regarding a prisoner who has been sentenced to life imprisonment, the Minister shall refer the matter to the National Advisory Council, which, after considering the report of the parole board, and having regard to the interests of the community, shall make a recommendation to the Minister regarding the placement of the prisoner on parole. 25 30

(6) The Minister may, after considering such recommendation, authorize the placement of the prisoner on parole subject to any conditions which he may determine and as from a date determined by him up to the date of such prisoner's death.

(7) After considering a report from a parole board regarding a prisoner who has been sentenced to an indeterminate sentence because of his declaration as an habitual criminal and which report contains a recommendation for the placement on parole of the prisoner stating— 35

- (a) that there is a reasonable probability that the prisoner will in future abstain from crime and lead a useful and industrious life; 40
- or
- (b) that the prisoner is no longer capable of engaging in crime; or
- (c) that for any other reason it is desirable to place such prisoner on parole, 45

the Commissioner may, subject to the provisions of subsection (4), authorize the placement of the prisoner on parole for a period of three years, subject to any conditions which he may determine.

(8) After considering a report from a parole board submitted in terms of section 63 regarding a prisoner who has been sentenced to a determinate sentence or to imprisonment for corrective training or for the prevention of crime, the Commissioner may, subject to the provisions of subsection (4), place the prisoner on parole as from a date determined by him. 50

(9) Without considering a report contemplated in section 63, the Commissioner may, subject to the provisions of subsection (4), place a prisoner sentenced to imprisonment for a period not exceeding six months on parole as from a date determined by him. 55

Placement on parole and unconditional release of prisoners, and remission of sentence by the State President

66. (1) Notwithstanding anything to the contrary in any law contained, the State President may at any time authorize the placement on parole or unconditional release of any prisoner and may remit any part of a prisoner's sentence. 5

(2) In any case where a placement on parole or release contemplated in subsection (1) of any prisoner is justified and urgent, the Minister may authorize the immediate placement on parole or release of the prisoner concerned, subject to any conditions which he may determine, in anticipation of the State President's approval: Provided that the Minister shall as soon as possible inform the State President of his decision and the conditions determined by him in anticipation of the State President's approval. 10

Special measures for the reduction of the prison population 15

67. If the Minister is satisfied that the prison population in general or the population of a particular prison is reaching such proportions that the safety, human dignity and physical care of the prisoners are being materially affected detrimentally, he may on the recommendation of the National Advisory Council advance the date of the placement of any prisoner or group of prisoners on parole, subject to any condition which he may determine. 20

Special remission of sentence by the Minister

68. Notwithstanding any provision to the contrary the Minister may on the recommendation of the Commissioner grant to a prisoner who has rendered highly meritorious service a special remission of sentence not exceeding two years either unconditionally or on such conditions as he may determine. 25

Placement on parole or release on medical grounds

69. A prisoner serving any sentence in a prison— 30
 (a) who suffers from a dangerous, infectious or contagious disease;
 or
 (b) whose release or placement on parole is expedient on the grounds of his physical condition or, in the case of a woman, her advanced pregnancy, 35
may at any time, on the recommendation of the medical officer, be released unconditionally or placed on parole by the Minister.

Saving of State President's power to pardon or reprieve offenders

70. Nothing in this Act shall affect the power of the State President to pardon or reprieve offenders. 40

Amendment of section 79 of Act 8 of 1959

22. Section 79 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) to confine a prisoner so as to ensure that the disciplinary measures imposed upon him in terms of section 51 or 54 can be applied effectively if no other cell is available which fits the purpose;” 45

Amendment of section 81 of Act 8 of 1959, as substituted by section 20 of Act 58 of 1978 and amended by section 3 of Act 54 of 1979

23. Section 81 of the principal Act is hereby amended by the substitution in subsection (3) for the expression "President's patient", wherever it occurs, of the expression "State patient".

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Amendment of section 92A of Act 8 of 1959, as inserted by section 27 of Act 92 of 1990

24. Section 92A of the principal Act is hereby amended by the addition of the following subsection:

"(5) A boarding fee in accordance with a tariff determined by the Minister in consultation with the Minister of State Expenditure, may be levied from a prisoner to whom daily parole has been granted in terms of subsection (1)."

Amendment of section 93 of Act 8 of 1959, as amended by section 23 of Act 75 of 1965, section 51 of Act 70 of 1968, section 4 of Act 6 of 1985 and section 30 of Act 122 of 1991

25. Section 93 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may delegate any of the powers vested in him by this Act (except [sections 6(2), 19(2) and (20)] section 94) to the Commissioner."

Amendment of section 94 of Act 8 of 1959, as amended by section 37 of Act 80 of 1964, section 24 of Act 75 of 1965, section 17 of Act 101 of 1969, section 8 of Act 92 of 1970, section 17 of Act 62 of 1973, section 6 of Act 43 of 1981, section 20 of Act 104 of 1983, section 46 of Act 97 of 1986, section 28 of Act 92 of 1990 and section 31 of Act 122 of 1991

26. Section 94 of the principal Act is hereby amended—

(a) by the insertion after paragraph (b)ter of subsection (1) of the following paragraph:

"(b)quat fair labour practices and in general all matters in order to attain the objectives of this Act;";

(b) by the substitution in the Afrikaans text for paragraph (c) of subsection (1) of the following paragraph:

"(c) die algemene beheer en bestuur van gevangenis, die handhawing van die goeie orde en [tug] dissipline daarin, en die dade of versuime wat as [misdrywe] oortredings teen die [tug] dissipline geag word;";

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

"(d) the powers, functions and duties of institutional committees, parole boards, correctional boards and the National Advisory Council, quorum and procedure at meetings and the form of reports of such committees, boards and Council;";

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

"(p) the manner in which sentences of imprisonment, [spare diet,] corporal punishment [solitary confinement,] or any other sentences and any disciplinary measures imposed under section 54 are to be carried out;";

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

"(r) the release or placement on parole of persons serving sentences of imprisonment;" and

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

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“(y) the attendance of witnesses at trials or enquiries or investigations by commissioned officers, institutional committees and boards of enquiry under this Act and the payment of witness fees and travelling expenses;”

Substitution of section 23 of Act 58 of 1978

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27. The following section is hereby substituted for section 23 of the Prisons Amendment Act, 1978 (Act No. 58 of 1978):

“Substitution of section 88 of Act 8 of 1959, as amended by section 5 of Act 4 of 1972

23. The following section is hereby substituted for section 88 of the principal Act:

‘Establishment, conduct and exemption from certain moneys of canteens at prisons

88. (1) Canteens for the exclusive use or benefit of members of the Department, **[of Prisons,]** the families of such members and other persons or categories of persons prescribed by regulation, may be established and conducted on such conditions and in such manner as may be prescribed by regulation.

(2) No licence moneys, tax, duty or fee (other than customs or excise **[or sales]** duties or value-added tax leviable by law) shall be payable by any person under any law or bye-law in respect of any canteen established in terms of subsection (1).

(3) The production of an official document bearing the signature of the Minister or of a person authorized by him to sign any such document and indicating that he has certified the canteen shall be conclusive proof that it is a canteen as contemplated in subsection (1).

(4) For the purposes of this section—

(a) ‘canteen’ includes any mess for members of the **[Prisons Service] Department** or any **[Prisons Department institution] institution of the Department** or any premises temporarily or permanently used for providing recreation, refreshment or necessaries for the exclusive use or benefit of members of the Department, **[of Prisons,]** the families of such members and other persons or categories of persons prescribed by regulation;

(b) any canteen which before the date of commencement of section 23 of the Prisons Amendment Act, 1978, was certified by the Minister or any person authorized by him as contemplated in subsection (3), shall be deemed to be a canteen established on the conditions and in the manner referred to in subsection (1).”

Short title and commencement

28. (1) This Act shall be called the Correctional Services Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.

(3) Section 13 shall be deemed to have come into operation on 2 February 1990.