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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1595.

11 Julie 1990

No. 1595.

11 July 1990

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

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

■. 92 van 1990: Wysigingswet op Gevangenis, 1990.

No. 92 of 1990: Prisons Amendment Act, 1990.

PRISONS AMENDMENT ACT, 1990

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Prisons Act, 1959, so as to define or further define certain expressions and to delete certain definitions; to increase certain fines; to regulate the dismissal of commissioned officers; to regulate the dismissal of members of the Prisons Service who strike; to authorize the award of decorations and medals to any person in respect of services in aid of the Prisons Service; to further regulate the establishment of prisons; to further regulate the separation of prisoners; to provide for the transfer of juveniles from prisons to reform schools; to further regulate the procedure in case of misconduct of commissioned officers; to institute the grant of daily parole to prisoners; and to make certain textual changes; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 28 June 1990.)

B E 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, 5 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 and section 1 of Act 6 of 1985

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

- 10 (a) by the substitution for the definition of "Commission for Administration" of the following definition:
 "Commission for Administration" means the Commission for Administration referred to in section [4] 2 of the [Public Service Act, 1957 (Act No. 54 of 1957)] Commission for Administration Act, 1984 (Act No. 65
 15 of 1984);";
- (b) by the insertion after the definition of "Commission for Administration" of the following definition:
 "daily parole" means daily parole granted to any prisoner in terms of
 section 92A;";
- 20 (c) by the deletion of the definition of "farm colony";
 (d) by the deletion of the definition of "non-white prisoner";
 (e) by the substitution for the definition of "Public Service" of the following definition:
 "Public Service" means the public service [as defined] referred to in section
 25 [three] 7 of the Public Service Act [1957 (Act No. 54 of 1957)], 1984
 (Act No. 111 of 1984);";
- (f) by the deletion of the definition of "race";

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(g) by the insertion after the definition of "reserve force" of the following definition:

"strike" includes any socio-economic, sympathy, solidarity, protest, work to rule or precision strike, as well as any other form of strike or stay-away;; and

(h) by the deletion of the definition of "white prisoner".

Amendment of section 9B of Act 8 of 1959, as inserted by section 4 of Act 104 of 1983

2. Section 9B of the principal Act is hereby amended by the substitution in subsection (7) for the expression "R300" of the expression "R2 000".

10 Amendment of section 9C of Act 8 of 1959, as inserted by section 4 of Act 104 of 1983

3. Section 9C of the principal Act is hereby amended by the substitution in subsection (2) for the expression "R300" of the expression "R2 000".

15 Amendment of section 12 of Act 8 of 1959, as amended by section 4 of Act 75 of 1965, section 10 of Act 62 of 1966, section 2 of Act 9 of 1971, section 3 of Act 58 of 1978 and section 5 of Act 104 of 1983

4. Section 12 of the principal Act is hereby amended by the substitution in subsection (10) for the expression "one hundred rand" of the expression "R2 000".

Insertion of sections 13A and 13B in Act 8 of 1959

5. The following sections are hereby inserted in the principal Act after section 13:

20 "Discharge of commissioned members of Prisons Service

13A. Notwithstanding the provisions of this Act the Minister may, and shall if ordered thereto by the State President, discharge a commissioned officer from the service of the Prisons Service summarily if—

- 25 (a) that commissioned officer is serving a sentence of imprisonment; or
(b) that commissioned officer is convicted of any offence referred to in section 12, 14, 43, 44, 45, 46 or 47.

Summary dismissal of members of Prisons Service who strike

30 13B. If the Commissioner is of the opinion that a member of the Prisons Service strikes or conspires with another person to strike or incites, instigates or commands another person to strike, he may, after affording such a member the opportunity to be heard, summarily dismiss such member from the Prisons Service: Provided that—

- 35 (a) such member shall as soon as practicable after the date of such dismissal be notified in writing of the dismissal, the reasons for the dismissal being stated;
40 (b) such member may, within 30 days after the date of receipt of the notice, make written representations to the Minister regarding the revocation of the dismissal;
(c) the Minister may, after having considered the representations, reinstate such member in his employment as from the date of his dismissal."

Substitution of section 14 of Act 8 of 1959, as substituted by section 7 of Act 104 of 1983

6. The following section is hereby substituted for section 14 of the principal Act:

45 "Members of Prisons Service may be discharged for assaulting prisoners

14. Any member of the Prisons Service [other than a commissioned officer] who is convicted of assaulting any prisoner may, in addition to any other penalty imposed therefor, be discharged from the service of the

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Prisons Service and if he has been so discharged, he shall not be reappointed as a member of the Prisons Service.”.

Amendment of section 17 of Act 8 of 1959, as amended by section 7 of Act 75 of 1965

- 5 7. Section 17 of the principal Act is hereby amended by the substitution in subsection (3) for the expression “fifty rand” of the expression “R1 000”.

Amendment of section 19 of Act 8 of 1959

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

- 10 “(1) The State President may institute, constitute and create decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by him or by the Minister subject to such conditions as may be prescribed by regulation to any person who is or was a member of the Prisons Service, in respect of his services as such member, or to
15 any other person in respect of his contribution to the development and administration of prisons in the Republic.”.

Substitution of section 20 of Act 8 of 1959, as amended by section 3 of Act 88 of 1977

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

“Establishment of prisons and meaning of ‘gaol’ in other laws

20. (1) The Minister may, by notice in the *Gazette*, establish prisons—
25 (a) for the reception, detention, confinement, training and treatment of persons liable to detention in custody, whether under sentence of court, or prior to sentence, or otherwise requiring by law to be detained, confined or treated;
(b) for the detention, treatment and training of—
30 (i) juveniles liable to detention in custody and such prisoners over the age of twenty-one years as, by reason of their immaturity, may in the opinion of the Commissioner more appropriately be classified as juveniles; and
(ii) convicted prisoners other than those referred to in subparagraph (i);
35 (c) to serve as observation centres for determining the age, health, mental condition, character traits, social background, previous conduct, ability to work, aptitude and training of selected prisoners with a view to their classification and training;
(d) for the detention and medical treatment of chronic sick or infirm prisoners who for any reason cannot be treated in an ordinary
40 prison;
(dA) of the type known as hospital prisons for psychopaths at which prisoners are detained who—
(i) have been certified as psychopaths in terms of the Mental Health Act, 1973 (Act No. 18 of 1973); or
45 (ii) apparently are suffering from psychopathic disorders and have been referred for observation in terms of any law relating to mentally ill persons;
50 [(e) of the type known as farm colonies to which persons declared to be idle persons in terms of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945), may be sent to learn habits of industry and labour; and]

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(f) of such other types as he may from time to time deem necessary to establish in pursuance of any scheme for the reformation and rehabilitation of persons convicted of any offence and sentenced to any period of imprisonment or detention.

5 (2) Any prison established under paragraph (a) of subsection (1) may serve one or more districts as circumstances may require; and for the purposes of any law relating to magistrates' courts any prison established to serve more than one district shall be deemed to be the prison of each district served by that prison.

10 (3) Any reference in any law to a 'gaol' or to a 'prison or gaol' or to a 'prison and gaol' shall be read as referring to a prison as defined in this Act [and any reference in any law to a 'farm colony' shall be read as referring to a farm colony as defined in this Act]."

Substitution of section 23 of Act 8 of 1959

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

"Separation of prisoners

23. (1) In every prison men and women prisoners shall be detained in separate parts thereof.

20 (2) If the Commissioner, or any officer designated by him, is of the opinion that it is necessary for the treatment, training, rehabilitation or welfare of a specific prisoner or prisoners or prisoners of a specific class or for the discipline, good order or security in a specific prison, he or such an officer, as the case may be, may, subject to subsection (1), order that the said prisoner or prisoners or prisoners of the said class be separated
25 from other prisoners and detained separately."

Amendment of section 29 of Act 8 of 1959, as amended by section 104 of Act 33 of 1960, section 8 of Act 75 of 1965 and section 9 of Act 104 of 1983

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

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

30 "(1) A person under the age of eighteen years who is accused of having committed an offence shall before his conviction not be detained in a prison or a police cell or lock-up unless his detention is necessary and no suitable place of [detention] safety mentioned in section [thirty eight] 28 of the
35 [Children's Act, 1960 (Act No. 33 of 1960)] Child Care Act, 1983 (Act No. 74 of 1983), is available for his detention."; and

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

"(2) In deciding as to the suitability of any place for the detention of a person referred to in subsection (1) regard may be had to the nature of the offence with which he is charged and to his age, sex [race] and character."

40 Amendment of section 34 of Act 8 of 1959, as substituted by section 5 of Act 88 of 1977

12. Section 34 of the principal Act is hereby amended by the substitution for subsection (1) in the Afrikaans text of the following subsection:

45 "(1) 'n Gevangene wat, terwyl hy 'n vonnis van gevangenisstraf uitdien, na 'n inrigting soos omskryf in artikel 1 van die Wet op Geestesgesondheid, 1973, of 'n hospitaalgevangenis vir psigopate oorgeplaas word, moet, sodra hy geskik is om daaruit ontslaan te word, deur die owerhede van daardie inrigting of hospitaalgevangenis vir psigopate [na 'n gevangenis of hospitaalgevangenis vir psigopate], na gelang van die geval, teruggestuur word om die vonnis wat as gevolg van sy oorplasing na daardie inrigting of hospitaalgevangenis vir psigopate
50 onderbreek is, te voltooi."

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Repeal of section 40 of Act 8 of 1959

13. Section 40 of the principal Act is hereby repealed.

Amendment of section 41 of Act 8 of 1959, as amended by section 10 of Act 75 of 1965

14. Section 41 of the principal Act is hereby amended by the substitution for the expression "fifty rand" of the expression "R1 000".

Amendment of section 42 of Act 8 of 1959, as amended by section 11 of Act 75 of 1965

15. Section 42 of the principal Act is hereby amended by the substitution for the expression "one hundred rand" of the expression "R2 000".

Amendment of section 44 of Act 8 of 1959, as substituted by section 6 of Act 88 of 1977 and amended by section 10 of Act 104 of 1983

16. Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for the expression "two thousand rand" of the expression "R8 000".

Amendment of section 45 of Act 8 of 1959, as substituted by section 11 of Act 104 of 1983

15 17. Section 45 of the principal Act is hereby amended by the substitution for the expression "R1 000" of the expression "R4 000".

Amendment of section 46 of Act 8 of 1959, as amended by section 14 of Act 75 of 1965, section 5 of Act 43 of 1981 and section 12 of Act 104 of 1983

20 18. Section 46 of the principal Act is hereby amended by the substitution in subsection (3) for the expression "R1 000" of the expression "R4 000".

Amendment of section 47 of Act 8 of 1959, as substituted by section 13 of Act 104 of 1983

19. Section 47 of the principal Act is hereby amended by the substitution for the expression "R2 000" of the expression "R8 000".

25 Amendment of section 50 of Act 8 of 1959, as amended by section 16 of Act 75 of 1965

20. Section 50 of the principal Act is hereby amended by the substitution in subsection (2) for the expression "one hundred rand" of the expression "R2 000".

Amendment of section 53 of Act 8 of 1959, as amended by section 17 of Act 75 of 1965, section 4 of Act 4 of 1972, section 11 of Act 58 of 1978 and section 4 of Act 22 of 1980

30 21. Section 53 of the principal Act is hereby amended by the substitution in paragraph (c) of subsection (2) for the expression "sixty rand" of the expression "R200".

Amendment of section 55 of Act 8 of 1959, as amended by section 49 of Act 70 of 1968, section 13 of Act 58 of 1978, section 4 of Act 65 of 1982 and section 32 of Act 97 of 1986

35 22. Section 55 of the principal Act is hereby amended—
(a) by the substitution in subsection (6) for subparagraph (iii) of paragraph (d) of the following subparagraph:
“(iii) impose a fine not exceeding [one hundred rand] R300, which may be recovered by way of stoppages from the salary or allowances of the officer concerned: Provided that the Minister may suspend the pay-

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- ment of any fine so imposed, or any part of that fine, for a period not exceeding three years on any condition relating to good conduct or any other matter; or"; and
- 5 (b) by the insertion in paragraph (d) of subsection (6) after subparagraph (iii) of the following subparagraph:
- "(iiiA) direct that the matter be resubmitted to him for disposal in terms of this section after the expiry of such period, not exceeding 12 months, as he may specify; or".

Amendment of section 61 of Act 8 of 1959, as substituted by section 7 of Act 22 of 1980

- 10 23. Section 61 of the principal Act is hereby amended by the deletion of subparagraph (v) of paragraph (b).

Repeal of section 65 of Act 8 of 1959

24. Section 65 of the principal Act is hereby repealed.

15 **Substitution of section 74 of Act 8 of 1959, as amended by section 22 of Act 75 of 1965 and section 16 of Act 104 of 1983**

25. The following section is hereby substituted for section 74 of the principal Act:

"Transfer of persons from reform school to prison

- 20 74. (1) Notwithstanding anything contained in the **[Children's Act, 1960 (Act No. 33 of 1960)] Child Care Act, 1983 (Act No. 74 of 1983)**, or any other law, the Minister as defined in the said Act may, in consultation with the Minister, by order in writing transfer to a prison designated by the Minister any person **[detained in a reformatory]** receiving training in a reform school governed by that Act, if, in his opinion, such person is a type of person who is not amenable to training in a **[reformatory]** reform school.

- 25 (2) A person transferred to a prison in terms of subsection (1) shall for all purposes be deemed to have been released from the provisions of the **[Children's Act, 1960] Child Care Act, 1983**, and to be subject, *mutatis mutandis*, to all the provisions of this Act as if he had on the date of his transfer been sentenced to two years' imprisonment: Provided that he shall not under this section be detained under this Act for a period beyond the date upon which he would normally have been released from the **[reformatory] reform school** had he not been so transferred."
- 30

Insertion of section 74A in Act 8 of 1959

- 35 26. The following section is hereby inserted in the principal Act after section 74:

"Transfer of convicted juveniles from prison to reform school

- 40 74A. The Minister may, in consultation with the Minister as defined in the **Child Care Act, 1983 (Act No. 74 of 1983)**, by order in writing transfer any person under the age of 21 years who is undergoing in any prison a sentence of imprisonment, to a reform school governed by the **Child Care Act, 1983**, and from the date of that order that person shall be deemed to have been sent to that reform school under section 290 of the **Criminal Procedure Act, 1977 (Act No. 51 of 1977)**."

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Insertion of section 92A in Act 8 of 1959

27. The following section is hereby inserted in the principal Act after section 92:

“Daily parole

5 **92A. (1) Notwithstanding the provisions of the warrant under which a prisoner is being detained in custody, the Commissioner may in respect of a prisoner serving any period of imprisonment and irrespective of whether the imprisonment was imposed with or without the option of a fine, by written order grant daily parole to such a prisoner on the conditions and for the periods specified therein.**

10 (2) Daily parole granted under subsection (1) may at any time be cancelled by the Commissioner.

15 (3) On any cancellation of daily parole contemplated in subsection (2) the Commissioner shall notify the prisoner accordingly and, if he is outside a prison, direct him in the prescribed manner to return to a prison.

(4) Any prisoner to whom daily parole has been granted under subsection (1) and who—

(a) fails to report at a prison in accordance with the order concerned; or

20 (b) after he has been directed to return in terms of subsection (3), fails to return to a prison forthwith,

shall for the purposes of section 48 be deemed to have escaped from a prison.”.

25 **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 and section 46 of Act 97 of 1986**

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

(a) by the insertion in subsection (1) after paragraph (aa) of the following paragraph:

30 “(aa)bis any matter in connection with daily parole;”;

(b) by the substitution in paragraph (a) of subsection (2) for the expression “one hundred rand” of the expression “R2 000”; and

(c) by the substitution in paragraph (c) of subsection (2) for the expression “one hundred rand” of the expression “R2 000”.

35 **Amendment of section 95 of Act 8 of 1959, as amended by section 14 of Act 62 of 1966**

29. Section 95 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

40 “(c) every convict prison, gaol **[farm colony]** or other institution established under any provision of any such law shall be deemed to have been established as a prison under the corresponding provision of this Act, notwithstanding that the name thereof is altered by this Act;”.

Short title

30. This Act shall be called the Prisons Amendment Act, 1990.