

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.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Selling price • Verkoopprijs
(GST excluded/AVB uitgesluit)

Local **80c** Plaaslik
Other countries R1,10 Buitelands
Post free • Posvry

VOL. 313

CAPE TOWN, 10 JULY 1991

No. 13367

KAAPSTAD, 10 JULIE 1991

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1516.

10 July 1991

No. 1516.

10 Julie 1991

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 geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 122 of 1991: Correctional Services and Supervision Matters Amendment Act, 1991

No. 122 van 1991: Wysigingswet op Aangeleenthede rakende Korrektiewe Dienste en Toesig, 1991

Act No. 122, 1991

CORRECTIONAL SERVICES AND SUPERVISION
MATTERS AMENDMENT ACT, 1991

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.

(Afrikaans text signed by the State President.)
(Assented to 27 June 1991.)

ACT

To extend the mission of the Department of Correctional Services and to establish correctional supervision as an alternative dispensation in lieu of prosecution or upon passing sentence; for that purpose to amend the Prisons Act, 1959, by the insertion of definitions of certain expressions, to replace others and to delete others; to extend the functions of the said Department; to further regulate the control of the said Department; to make provision for the appointment and conditions of service of the Commissioner of Correctional Services; to make provision for the appointment, powers, functions and duties of correctional boards and the remuneration of certain members thereof; to make provision for the extension of the constitution, functions and duties of institutional committees and the remuneration of certain members thereof; to make provision for the establishment, constitution, powers, functions and duties of the National Advisory Council on Correctional Services and the remuneration of certain members thereof; to replace certain obsolete expressions; to further regulate membership of the reserve force of the said Department; to extend the period during which members of the said Department may be discharged without an enquiry; to make it an offence to interfere with a member of the said Department or a temporary correctional official in the performance of his functions; to abolish the release of prisoners on probation; to regulate or further regulate the contracting of agreements for the labour or service of prisoners and persons subject to correctional supervision and the sale of the products of the labour or service in any prison; to abolish certain measures in respect of female prisoners; to further regulate the payment of remuneration to prisoners; to make provision for the application and administration of correctional supervision as a community-based punishment; to make provision for the appointment, remuneration, conditions of service and functions of temporary correctional officials and voluntary workers; to make provision for the liability of the State for patrimonial loss arising from the performance of service by any person subject to correctional supervision; to extend the power of the Minister of Correctional Services to delegate certain of his powers under the said Act; to extend the power of the said Minister to make regulations; to replace the short title; and to replace the long title; to amend the Criminal Procedure Act, 1977, by the insertion of definitions of certain expressions; to empower an attorney-general or a prosecutor before judgment in a criminal case to reconsider the case and suspend the court proceedings so that the accused may, with his concurrence, be placed under correctional supervision on certain conditions; to make provision that a probation officer or correctional official and the parent or guardian of any person under the age of 18 years shall be notified of his arrest; to make provision that an accused who has been released on bail may be placed under the supervision of a probation officer or correctional official; to make provision that an accused under the age of 18 years who is in custody may, instead of being released on bail or detained in custody, be placed under the supervision of a probation officer or correctional official; to extend the proof of certain facts by means of an affidavit or certificate; to make provision that a court may impose correctional supervision, or imprisonment from which a person may be placed under correctional supervision in his discretion by the said Commissioner and *vice versa*, as punishment on a

person convicted of an offence, and for conditions on which such punishment may be so imposed; to make provision for the conversion by the court, on application by the said Commissioner, of imprisonment into correctional supervision or any other proper punishment and *vice versa*; to make provision that the said Commissioner may in his discretion place a person upon whom a period of imprisonment has been imposed as an alternative to a fine, under correctional supervision under certain circumstances and *vice versa*; to make provision that any person under the age of 21 years who has been convicted of any offence may on certain conditions be placed under the supervision of a correctional official; to make provision for the conversion of certain orders in respect of convicted juveniles; to make provision that a person who has been committed to a rehabilitation centre and is found not to be fit for treatment in such a centre, may be referred back to the court for imposition of a proper sentence; to make provision that the passing or operation of certain sentences may be postponed or suspended, respectively, on condition that the convicted person submits himself to correctional supervision; to empower the Minister of Justice to make regulations so as to establish steering projects for the launching of correctional supervision as an alternative dispensation in lieu of prosecution or upon passing sentence and for that purpose to appoint an implementation committee and one or more boards to advise him in that regard; and to make provision for certain transitional measures; and to provide for matters connected therewith.

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 and section 1 of Act 92 of 1990

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

- (a) by the deletion of the definitions of “advisory release board”, “release board” and “release on probation”;
- (b) by the substitution for the definition of “Commissioner” of the following definition:

“ ‘Commissioner’ means the Commissioner of [Prisons] Correctional Services appointed under section 4(1);”;
- (c) by the insertion after the definition of “Commission for Administration” of the following definitions:

“ ‘correctional board’ means a correctional board appointed under section 5;

‘correctional official’ means a member of the Department referred to in section 2(1) or any person appointed under section 84C(a);

‘correctional supervision’ means a community-based punishment to which a person is subject in accordance with Chapter VIIIA and the regulations if—

 - (a) he has been placed under that under section 6(1)(c) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (b) it has been imposed on him under section 276(1)(h) or (i) of the Criminal Procedure Act, 1977, and he, in the latter case, has been placed under that;
 - (c) his sentence has been converted into that under section 276A(3)(e)(ii) or 287(4)(b) of the Criminal Procedure Act, 1977, or he has been placed under that under section 287(4)(a) of the Criminal Procedure Act;

Act No. 122, 1991

CORRECTIONAL SERVICES AND SUPERVISION
MATTERS AMENDMENT ACT, 1991

- (d) it is a condition on which the passing of his sentence has been postponed and he has been released under section 297(1)(a)(i)(ccA) of the Criminal Procedure Act, 1977; or
- (e) it is a condition on which the operation of—
- (i) the whole or any part; or
 - (ii) any part,
- of his sentence has been suspended under section 297(1)(b) or (4) of the Criminal Procedure Act, 1977, respectively;”;
- (d) by the insertion after the definition of “daily parole” of the following definition:
- “‘Department’ means the Department of Correctional Services established by section 2(1);”;
- (e) by the substitution for the definition of “Minister” of the following definition:
- “‘Minister’ means the Minister of [Justice] Correctional Services;”;
- (f) by the insertion after the definition of “Minister” of the following definition:
- “‘National Advisory Council’ means the National Advisory Council on Correctional Services established by section 5B;”;
- (g) by the insertion after the definition of “prisoner” of the following definition:
- “‘probationer’ means any person who is subject to correctional supervision;” and
- (h) by the substitution for the definition of “reserve force” of the following definition:
- “‘reserve force’ means the [Prisons Service Reserve Force] reserve force referred to in section 9B;”.

Substitution of section 2 of Act 8 of 1959, as amended by Government Notice No. 2302 of 31 October 1980, section 3 of Act 43 of 1981 and section 2 of Act 104 of 1983

2. The following section is hereby substituted for section 2 of the principal Act:

“**Establishment and functions of Department of Correctional Services**

2. (1) There shall be a department to be styled the Department of Correctional Services, consisting of members who shall be known as correctional officials and who—
- (a) have been appointed as commissioned officers under section 4;
 - (b) have been appointed as members, other than commissioned officers, under section 8; and
 - (c) are members of the reserve force in terms of section 9B.
- (2) The functions of the Department shall be—
- (a) to ensure that every prisoner lawfully detained in any prison be kept therein in safe custody until lawfully discharged or removed therefrom;
 - (b) as far as practicable, to apply such treatment to convicted prisoners and probationers as may lead to their reformation and rehabilitation and to train them in habits of industry and labour;
 - (c) to apply correctional supervision in respect of probationers;
 - (d) as far as practicable, to be self-sufficient by the optimal application of production means based on management according to business principles;
 - (e) the performance of all work necessary for, arising from, or in connection with, the effective management of the Department; and
 - (f) to perform such other duties as the Minister may from time to time assign to the Department.”.

Substitution of section 3 of Act 8 of 1959, as substituted by section 3 of Act 43 of 1981

3. The following section is hereby substituted for section 3 of the principal Act:

“Control of Department of Correctional Services

3. (1) The Department shall, notwithstanding anything to the contrary contained in any law but subject to the provisions of subsection (2), be under the control of the Commissioner. 5

(2) In the execution of his powers and the performance of his duties, including the powers delegated to him under section 93(1), the Commissioner shall be subject to such general policy as may be determined by the Minister and to his directions.” 10

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 and section 31 of Act 97 of 1986

4. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The State President may from time to time, by commission under his hand or bearing a replica of his signature, appoint a commissioned officer, to be styled the Commissioner of **[Prisons] Correctional Services**, and such other commissioned officers as he may deem necessary: Provided that the conditions of service of the Commissioner shall, subject to the provisions of section 2(2) of the Public Service Act, 1984 (Act No. 111 of 1984), be governed by this Act: Provided further that the Commissioner shall also be entitled to the privileges of a head of a department which are not conferred upon him by this Act.” 15
20

Substitution of section 5 of Act 8 of 1959, as substituted by section 2 of Act 22 of 1980

5. The following section is hereby substituted for section 5 of the principal Act: 25

“Correctional boards

5. (1) The Minister shall appoint one or more boards at the prisons determined by him, in respect of a region determined by him, to be styled correctional boards, to exercise the powers and to perform the functions and duties conferred upon or assigned to a correctional board by or under this Act. 30

(2) (a) A member of a correctional board shall hold office for such period as the Minister may determine at the time of his appointment.

(b) A member of a correctional board whose office has become vacant otherwise than under paragraph (c), shall be eligible for reappointment. 35

(c) If in his opinion there is a valid reason for doing so, the Minister may at any time terminate the period of office of any member of a correctional board.

(d) If the period of office of any member of a correctional board terminates before the expiration of the period for which he has been appointed, the Minister shall, with due regard to the provisions of subsection (3), appoint some other person to fill the vacancy, and until such time as such person is so appointed, the remaining members shall constitute that correctional board. 40
45

(3) (a) A correctional board shall consist of such number of members, who may be members and non-members of the Department, and who, in the latter case, will be able to contribute to that board's functions, as the Minister may think fit.

(b) The Minister shall from time to time designate a member of the Department who serves on a correctional board, as chairman of that board. 50

(4) The members of a correctional 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 Finance.”

5

Amendment of section 5A of Act 8 of 1959, as inserted by section 3 of Act 22 of 1980

6. 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 [Prisons Service] Department, as the Commissioner may think fit and of whom one of the former shall be designated by the Commissioner as chairman of that committee.”; and

10

(b) by the addition of the following subsections:

“(4) The members of an institutional committee 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 Finance.

15

(5) Any member of a correctional board may attend any meeting of the institutional committee at the prison where such correctional board is appointed.”

20

Substitution of section 5B of Act 8 of 1959, as inserted by section 3 of Act 65 of 1982

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

“National Advisory Council on Correctional Services

25

5B. (1) There shall be a Council to be styled the National Advisory Council on Correctional Services and consisting of—

- (a) a judge of the Supreme Court of South Africa;
- (b) a magistrate of a regional division;
- (c) an attorney-general or a deputy attorney-general;
- (d) a member of the South African Police of or above the rank of brigadier;
- (e) a member of the Department of or above the rank of brigadier;
- (f) an official of a social welfare authority who holds the rank of director or an equivalent or higher rank and who has been designated by the Minister of National Health;
- (g) two or more persons who are not in the full-time service of the State and who, in the opinion of the Minister, have special knowledge or experience of matters connected with the powers, functions and duties of the Department; and
- (h) one or more persons designated by the Minister, who may be co-opted for any special purpose as members in specific cases or in general,

30

35

40

to exercise or perform the powers, functions and duties which are conferred upon or assigned to that Council under this Act.

45

(2) The Minister shall appoint each member of the National Advisory Council referred to in subsection (1)(a) to (h), and such a member shall hold office during the pleasure of the Minister.

(3) (a) The Minister shall for each member of the National Advisory Council contemplated in subsection (1)(a) to (f) designate an alternate who has the same qualification as the member for whom he is the alternate.

50

(b) An alternate contemplated in paragraph (a) shall, in the absence of the member for whom he is the alternate from any meeting of the

National Advisory Council, have all the powers and duties of that member at such a meeting.

(4) The majority of the members of the National Advisory Council shall constitute a quorum for a meeting of that Council.

(5) The member of the National Advisory Council contemplated in subsection (1)(a) shall be the chairman of that Council and one of the members contemplated in subsection (1)(b) to (g) shall be designated by the Minister as the vice-chairman.

(6) A decision of the majority of the members present at a meeting of the National Advisory Council, shall be the decision of that Council, and in the event of an equality of votes on any matter, the member presiding at the meeting concerned shall, in addition to his deliberative vote, have a casting vote.

(7) A member of the National Advisory Council who is not in the full-time service of the State may receive such allowances as may be determined by the Minister with the consent of the Minister of Finance.”.

Amendment of section 9 of Act 8 of 1959, as amended by section 2 of Act 4 of 1972

8. Section 9 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Every person, other than a person deemed to be a commissioned officer in terms of subsection (2), shall, while acting as a temporary warder, be vested with the same powers, functions and responsibilities, perform the same duties and be subject to the same discipline and authority as a [warder] member appointed in terms of section 8(1).”.

Amendment of section 9A of Act 8 of 1959, as substituted by section 3 of Act 4 of 1972

9. Section 9A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) All members of the [Prisons Service] Department, temporary correctional officials and voluntary workers referred to in section 84C and temporary warders, other than temporary warders who by agreement receive no remuneration for their services, shall be paid salaries or wages and allowances or reimbursement for expenses in accordance with the provisions of the Public Service Act, [1957 (Act No. 54 of 1957)] 1984 (Act No. 111 of 1984).”.

Amendment of section 9B of Act 8 of 1959, as inserted by section 4 of Act 104 of 1983 and amended by section 2 of Act 92 of 1990

10. Section 9B of the principal Act is hereby amended—

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

“(1) Every person who has served in a full-time capacity for a period [of not less than four years] as may be determined by the Minister with the concurrence of the Minister of Defence in a post on the fixed establishment of the [Prisons Service] Department, and who has resigned or who resigns from the service of the [Prisons Service] Department on or after 1 January 1983, becomes at the commencement of this [Act] section or upon his resignation a member of the [Prisons Service Reserve Force] reserve force, and, subject to the provisions of this Act, remains a member thereof until he attains the age of 55 years.”; and

(b) by the substitution for the proviso to subsection (5) of the following proviso:

“Provided that where a member of the reserve force has rendered [more than four years] continuous service in excess of the period referred to in subsection (1) in a full-time capacity in a post on the fixed establishment of the [Prisons Service] Department, his obligation so to serve shall be reduced by 120 days for every completed year of such continuous service in excess of [four years] the period referred to in subsection (1).”.

Act No. 122, 1991

CORRECTIONAL SERVICES AND SUPERVISION
MATTERS AMENDMENT ACT, 1991**Amendment of section 13 of Act 8 of 1959, as amended by section 6 of Act 104 of 1983**

11. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the following subparagraph: 5

“(iii) within a period of [12] 24 months after the appointment of that member it appears to the Commissioner that he is unfit to remain in the service of the [Prisons Service] Department.”

Amendment of section 39 of Act 8 of 1959

12. Section 39 of the principal Act is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs: 10

“(b) imprisonment for corrective training, shall be detained in a prison for a period of at least two years but not exceeding four years, to be determined by the Minister after [a prison board] an institutional committee has made a recommendation; 15

(c) imprisonment for the prevention of crime, shall be detained in a prison for a period of at least five years but not exceeding eight years, to be determined by the Minister after [a prison board] an institutional committee has made a recommendation.” 20

Insertion of section 42A in Act 8 of 1959

13. The following section is hereby inserted in the principal Act after section 42:

“Penalty for interference with members of Department or correctional officials

42A. Any person who resists or intentionally hinders or obstructs any member of the Department or any correctional official in the exercise of his powers or the performance of his functions or duties shall be guilty of an offence and liable on conviction to a fine not exceeding R4 000 or, in default of payment, to imprisonment for a period not exceeding 12 months, or to such imprisonment without the option of a fine, or to both such fine and such imprisonment.” 25 30

Substitution of headings before section 61 of Act 8 of 1959, as substituted by section 5 of Act 65 of 1982

14. The following headings are hereby substituted for the headings before section 61 of the principal Act:

“CHAPTER VI

35

POWERS, FUNCTIONS AND DUTIES OF INSTITUTIONAL COMMITTEES, [RELEASE BOARDS] CORRECTIONAL BOARDS AND THE [ADVISORY RELEASE BOARD] NATIONAL ADVISORY COUNCIL ON CORRECTIONAL SERVICES, AND RELEASE OF PRISONERS

(i) *Powers, functions and duties of institutional committees, [release boards] correctional boards and the [advisory release board] National Advisory Council”*. 40

Amendment of section 61 of Act 8 of 1959, as substituted by section 7 of Act 22 of 1980 and amended by section 23 of Act 92 of 1990

15. Section 61 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words: 45

“An institutional committee shall, with due regard to any remarks made by the court in question at the time of the imposition of the

sentence and at such times and intervals (which intervals shall not be longer than six months) as may be determined by the Commissioner or when otherwise required by the Minister or the Commissioner [or release board]—”; and

(b) by the substitution for paragraphs (b) and (c) of the following paragraphs: 5

- “(b) submit reports in the form prescribed by regulation to the Commissioner on, *inter alia*, the conduct, adaptation, training, aptitude, industry, physical and mental state of health and the possibility of relapse into crime of every prisoner who is detained in the prison in respect of which it has been appointed and— 10
- (i) upon whom a sentence of imprisonment of two years or more has been imposed; or
- (ii) with regard to whom a special report is required by the Minister or the Commissioner; 15
- (c) with due regard to any report on such a prisoner which is submitted in terms of paragraph (b), make recommendations to the Commissioner regarding—
- (i) the placing of such a prisoner under correctional supervision by virtue of a sentence under section 276(1)(i) or under section 287(4)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or the conversion of such a prisoner’s sentence into correctional supervision under section 276A(3)(e)(ii) or 287(4)(b) of the Criminal Procedure Act, 1977, and the period for which and the conditions on which such a prisoner may be so subjected to correctional supervision; 20
- (ii) the release of such a prisoner on parole under the provisions of this Act or upon expiration of his sentence and the period for which, the supervision under which and the conditions on which such a prisoner may be so released on parole; 25
- (iii) the remission of a portion of the sentence imposed on such a prisoner if he is a prisoner referred to in paragraph (b)(i); and 30
- (d) exercise such other powers and perform such other functions and duties as are prescribed by regulation.” 35

Substitution of section 61A of Act 8 of 1959, as inserted by section 8 of Act 22 of 1980 40

16. The following section is hereby substituted for section 61A of the principal Act:

“Powers, functions and duties of correctional boards

- 61A. A correctional board may exercise the powers and shall perform the functions and duties which the Minister may from time to time confer upon or assign to that board and shall— 45
- (a) as far as practicable take such steps as may be necessary for the effective reintegration of released prisoners and probationers with the community;
- (b) extend and promote the community’s interests and involvement in correctional matters; 50
- (c) advise the Minister regarding any matter which ought to be considered by the National Advisory Council;
- (d) advise the Minister in accordance with the particular circumstances and needs of a region concerned regarding the most cost-effective running of such a region; 55
- (e) discuss any matter resulting from or in connection with the effective functioning of the Department and inform the regional commissioner concerned or commander of the area concerned regarding the board’s view in respect thereof.” 60

Substitution of section 61B of Act 8 of 1959, as inserted by section 6 of Act 65 of 1982

17. The following section is hereby substituted for section 61B of the principal Act:

“Powers, functions and duties of National Advisory Council on Correctional Services

61B. The National Advisory Council may of its own accord, but shall, when required 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 release of prisoners;
 - (iv) the efficient and most cost-effective management of the Department;
- (b) the basis upon which remission of sentence ought to be granted to different categories of prisoners;
- (c) any recommendation regarding the release of a prisoner, the placing of a prisoner under correctional supervision or the conversion of a prisoner's sentence into correctional supervision which has been submitted to the Minister in a particular case;
- (d) the reintegration of prisoners and probationers with the community;
- (e) the assimilation of released prisoners and probationers into the labour force;
- (f) the generation of revenue by the Department; and
- (g) any other matter which is in the interests of the efficient running of the Department.”

Substitution of section 62 of Act 8 of 1959

18. The following section is hereby substituted for section 62 of the principal Act:

“Release of prisoners sentenced to imprisonment for corrective training or imprisonment for the prevention of crime

62. (1) Upon receipt of a report from [a prison board] an institutional committee regarding a prisoner who has been sentenced to imprisonment for corrective training or to imprisonment for the prevention of crime and containing a recommendation for the release of such prisoner on a date falling within the relevant period of detention prescribed by section 39; the Commissioner shall submit such report to the Minister.

(2) The Minister may authorize the release of such prisoner on the date recommended by the [prison board] institutional committee or on any other date within the said period, either unconditionally or [on probation or], subject to any such condition as he may determine, on parole as he may direct.”

Substitution of section 63 of Act 8 of 1959, as amended by section 16 of Act 58 of 1978

19. The following section is hereby substituted for section 63 of the principal Act:

“Remissions of sentence of prisoners sentenced to two years or more

63. (1) Upon receipt of a report from [a prison board] an institutional committee regarding a prisoner serving a sentence of imprisonment of two years or more and containing a recommendation for a remission of sentence within the limits prescribed by the [State

President] Minister by regulation, the Commissioner may remit such portion of the sentence, either unconditionally or on such conditions as he, on the recommendation of the **[board] committee**, may determine.

(2) (a) If the report referred to in subsection (1) contains a recommendation by the **[prison board] institutional committee** for the grant of remission in excess of the limits prescribed by the **[State President] Minister** by regulation, or if no remission of sentence is granted by the Commissioner under subsection (1), the Commissioner shall submit such report to the Minister with such recommendation as he may think fit.

(b) The Minister may authorize the release of the prisoner **[on probation or]**, subject to any such condition as he may determine, on parole [as he may direct].

Substitution of section 64 of Act 8 of 1959, as substituted by section 18 of Act 107 of 1990

20. The following section is hereby substituted for section 64 of the principal Act:

“Release of prisoner serving life sentence

64. (1) A prisoner upon whom a life sentence has been imposed, shall not be released unless the **[advisory release board] National Advisory Council**—

(a) after having been requested by the Minister to advise him in relation to that prisoner; and

(b) after considering a report of **[a release board] an institutional committee**,

with due regard to the interests of society, has made a recommendation to the Minister for the release of the prisoner and the Minister has accepted that recommendation.

(2) If the Minister accepts the recommendation for the release of such a prisoner, he may authorize the release of the prisoner on the date recommended by the **[advisory release board] National Advisory Council** or on any other date, either unconditionally or **[on probation or]**, subject to any such condition as he may determine, on parole as he may direct.

Amendment of section 66 of Act 8 of 1959, as amended by section 9 of Act 22 of 1980

21. Section 66 of the principal Act is hereby amended—

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

“Subject to the provisions of the proviso to section 38, no person who has been declared an habitual criminal under the provisions of any law shall be released until **[a prison board] an institutional committee** has reported to the Commissioner—”; and

(b) by the substitution for subsections (2) and (3) of the following subsections:

“(2) Upon receipt of a report from **[a prison board] an institutional committee** regarding a prisoner such as is referred to in subsection (1) and containing a recommendation for the release of such prisoner, the Commissioner shall submit such report to the Minister.

(3) The Minister may authorize the release of the prisoner **[either on probation or]**, subject to any such condition as he may determine, on parole on the date recommended by the [release board] institutional committee or on such other date as he may direct.”

Amendment of section 67 of Act 8 of 1959, as substituted by section 10 of Act 22 of 1980

22. Section 67 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words following on paragraph (b) of the following words: 5

“and irrespective of whether the imprisonment was imposed with or without the option of a fine, release such prisoner before the expiration of the period in question [either on probation or] on parole for such period and on such conditions as may be specified in the warrant of release.”; and 10

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

“(2) If any prisoner so released [on probation or] on parole completes the period thereof without breaking any condition of the release, he shall no longer be deemed to be liable to any punishment in respect of the conviction upon which he was sentenced.”. 15

Amendment of section 68 of Act 8 of 1959, as substituted by section 11 of Act 22 of 1980

23. Section 68 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If the Commissioner is satisfied that any prisoner has, before the expiration of the period of release [either on probation or] on parole, failed to observe any condition of his release [either on probation or] on parole, he may issue a warrant for the arrest of that prisoner, which may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which shall serve as authority for the prisoner to be detained in prison until lawfully discharged or released therefrom.”. 20 25

Amendment of section 69 of Act 8 of 1959

24. Section 69 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary in any law contained, if at any time it appears to him to be expedient, the State President may authorize the release of any prisoner either unconditionally or [on probation or], subject to any such condition as he may determine, on parole as he may direct, and may grant remission of a portion of the sentence of any prisoner.”. 30

Amendment of section 71 of Act 8 of 1959, as amended by section 6 of Act 9 of 1971 35

25. Section 71 of the principal Act is hereby amended by the substitution for the words following on paragraph (b) of the following words:

“may, on the recommendation of the medical officer, be released by the Minister either unconditionally or [on probation or], subject to any such condition as he may determine, on parole as the Minister may direct.”. 40

Amendment of section 75 of Act 8 of 1959, as amended by section 17 of Act 104 of 1983

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

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

“(1) The Commissioner may contract with any institution, person or body of persons for the employment of the labour or service of prisoners who are under sentence of imprisonment and probationers upon such terms and conditions as may be agreed between such parties.” 45

Act No. 122, 1991

CORRECTIONAL SERVICES AND SUPERVISION
MATTERS AMENDMENT ACT, 1991

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

“(3) The products of the labour or service in a prison may be sold to any person on such conditions as may be determined by the Minister.”; and

(c) by the deletion of subsection (5). 5

Substitution of section 76 of Act 8 of 1959

27. The following section is hereby substituted for section 76 of the principal Act:

“Gratuities or remuneration

76. Gratuities or remuneration may be paid to prisoners according to the conditions and tariffs determined by the Commissioner, with the concurrence of the Department of Finance.” 10

Insertion of Chapter VIII A and sections 84, 84A, 84B, 84C, 84D and 84E in Act 8 of 1959

28. The following Chapter and sections are hereby inserted in the principal Act after section 83: 15

“CHAPTER VIII A**CORRECTIONAL SUPERVISION****Treatment of probationers**

84. (1) Every probationer shall be subject to such monitoring, community service, house arrest, placement in employment, performance of service, payment of compensation to the victim and rehabilitation or other programmes as may be determined by the court or the Commissioner or prescribed by or under this Act, and to any such other form of treatment, control or supervision, including supervision by a probation officer, as the Commissioner may determine after consultation with the social welfare authority concerned in order to realize the objects of correctional supervision. 20 25

(2) Any probationer who is admitted to prison shall be treated as a sentenced prisoner and the same provisions which apply to such a prisoner shall *mutatis mutandis* apply to such a probationer: Provided that a probationer who is subject to correctional supervision under section 6(1)(c), 276(1)(h) or 297(1)(a)(i)(ccA), (1)(b) or (4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and who is admitted to prison, shall be treated as an unsentenced prisoner. 30 35

Administration

84A. Correctional supervision shall be applied and administered by the Commissioner in the manner prescribed by or under this Act.

Non-compliance with conditions

84B. (1) If the Commissioner is satisfied that a probationer has failed to comply with any condition to which he is subject in relation to correctional supervision either by agreement or as may be determined by the court or the Commissioner, he may issue a warrant for the arrest of such a probationer, which may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and which shall serve as authorization for the detention of such a probationer in a prison until he— 40 45

- (a) is lawfully discharged or released therefrom;
- (b) is again placed under correctional supervision by the Commissioner in his discretion; or
- (c) is referred back to the court within 72 hours for trial or for the passing or putting into operation of his postponed or suspended sentence, as the case may be, or to obtain a warrant from the court for his further detention until the court has decided on his case. 5
- (2) Any probationer who is subject to correctional supervision under section 6(1)(c), 276(1)(h) or 297(1)(a)(i)(ccA), (1)(b) or (4) of the Criminal Procedure Act, 1977, and who has been arrested and is being detained under the provisions of subsection (1) shall in such a case not be so detained for longer than 72 hours before he is brought before the court. 10
- (3) Any probationer—
- (a) who has been placed under correctional supervision by the Commissioner by virtue of a sentence under section 276(1)(i) or under section 287(4)(a) of the Criminal Procedure Act, 1977; or 15
- (b) in respect of whom imprisonment has been converted into correctional supervision by the court under section 276A(3)(e)(ii) or 287(4)(b) of the Criminal Procedure Act, 1977, 20
- and who has been arrested and is being detained under the provisions of subsection (1), may in such a case be detained in accordance with his original sentence or imprisonment by the Commissioner in his discretion in any prison without referral to the court which imposed such sentence or converted such imprisonment. 25

Personnel

- 84C. (1)** The Commissioner may appoint as many suitable persons who are not members of the Department as he may deem necessary, on the conditions prescribed by regulation—
- (a) to act as temporary correctional officials in respect of probationers; or 30
- (b) to act as voluntary workers in respect of probationers.
- (2) Every person shall, while acting as a temporary correctional official or voluntary worker referred to in subsection (1), be vested with the same powers, functions and responsibilities, perform the same duties and be subject to the same discipline and authority as any member of the Department. 35

Applicability of certain laws

- 84D.** The provisions of sections 31, 32 and 49 shall *mutatis mutandis* apply to all probationers unless they are inconsistent with the provisions of this Chapter. 40

Application of correctional supervision

- 84E. (1)** In the application of correctional supervision the Commissioner may, subject to the provisions of subsection (2) and any condition determined by the court, integrate any probationer with any appropriate rehabilitation or other programme established by himself, a social welfare authority or any other body to provide for— 45
- (a) the observance of and supervision over probationers;
- (b) the performance of community or other service by probationers; 50
- (c) the payment of compensation to victims, with due regard to any order which the court may have issued in that regard;
- (d) the reintegration of probationers with the community;
- (e) the rehabilitation of probationers;

- (f) the collection of funds, including the collection of costs from probationers in the execution of the punishment;
- (g) any other matter which he may consider necessary or expedient.

(2) When the Commissioner integrates a probationer with a programme established by any social welfare authority or other body, it shall take place with the concurrence of that authority or body, as the case may be.”

Insertion of section 89B in Act 8 of 1959

29. The following section is hereby inserted in the principal Act after section 89A:

“Liability for patrimonial loss arising from performance of service by probationers

89B. (1) If patrimonial loss may be recovered from a probationer on the ground of a delict committed by him in the performance of service arising from the application of correctional supervision, that loss may, subject to subsection (3), be recovered from the State.

(2) Subsection (1) shall not be construed as precluding the State from obtaining indemnification against its liability in terms of subsection (1) by means of insurance or otherwise.

(3) The patrimonial loss which may be recovered from the State under subsection (1) shall be reduced by the amount from any other source to which the injured person is entitled by reason of the patrimonial loss suffered by him.

(4) In so far as the State has made a payment by virtue of a right of recovery under subsection (1), all the relevant rights and legal remedies of the injured person against the probationer shall pass to the State.

(5) If any person as a result of the performance of service arising from the application of correctional service has suffered patrimonial loss which cannot be recovered from the State under subsection (1), the Commissioner may, with the concurrence of the Department of Finance, as an act of grace pay such amount as he may deem reasonable to that person.”

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 and section 4 of Act 6 of 1985

30. 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), [16(1),] 19(2) and 20(1)) 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 and section 28 of Act 92 of 1990

31. (1) Section 94 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of item (aa) of subparagraph (ii) of paragraph (b);

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

“(d) the powers, functions and duties of [prison boards] institutional committees, correctional boards and the National Advisory Council, quorum and procedure at meetings and the form of reports of such committees, boards and Council;”;

- (c) by the insertion in subsection (1) after paragraph (d) of the following paragraphs:
- “(dA) the appointment, conditions of service, powers, functions and duties of temporary correctional officials and voluntary workers referred to in section 84C; 5
- (dB) the general management of and control over correctional supervision;” and
- (d) by the substitution in subsection (1) for the words following on paragraph (cc) of the following words: 10
- “and such regulations may prescribe the powers of the Commissioner to issue [Prisons Service Orders] Orders for the Department which shall not be inconsistent with this Act and which shall be obeyed by all members of the [Prisons Service] Department and other persons in the service of the [Prisons Service] Department to whom such [Prisons Service Orders] Orders are applicable.” 15
- (2) Prisons Service Orders issued by virtue of a regulation under section 94(1) of the Prisons Act, 1959 (Act No. 8 of 1959), by the Commissioner and in force immediately before the commencement of paragraph (d) of subsection (1), shall remain in force upon such commencement until repealed or amended by the Commissioner or until they lapse, and shall be deemed to be Orders for the Department issued by virtue of a regulation under section 94(1) of the Correctional Services Act, 1959 (Act No. 8 of 1959). 20

Substitution of certain expressions in Act 8 of 1959

32. The principal Act is hereby amended by the substitution for the expressions “Prisons Service” and “Service”, wherever they occur in the principal Act, of the expression “Department”. 25

Amendment of section 97 of Act 8 of 1959

33. (1) Section 97 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30
- “(1) This Act shall be called the [Prisons] Correctional Services Act, 1959, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*; Provided that the State President may from time to time by proclamation in the *Gazette* bring into operation only such portions of this Act as he may specify in such proclamation.”
- (2) Unless it is clearly inappropriate in any specific case, any reference in any law or document to “prisons service” and “Prisons Act, 1959” shall be construed as a reference to “Department of Correctional Services” and “Correctional Services Act, 1959”, respectively. 35

Substitution of long title of Act 8 of 1959

34. The following long title is hereby substituted for the long title of the principal Act: 40

“ACT

To consolidate and amend the laws relating to [prisons] correctional services.”

Amendment of section 1 of Act 51 of 1977, as amended by section 1 of Act 107 of 1990 45

35. Section 1 of the Criminal Procedure Act, 1977 (hereinafter referred to as the Criminal Procedure Act), is hereby amended by the insertion in subsection (1) after the definition of “charge” of the following definitions: 50
- “ ‘Commissioner’ means the Commissioner of Correctional Services as defined in section 1 of the Correctional Services Act, 1959 (Act 8 of 1959), or a person authorized by him;

Act No. 122, 1991

CORRECTIONAL SERVICES AND SUPERVISION
MATTERS AMENDMENT ACT, 1991

- 'correctional official' means a correctional official as defined in section 1 of the Correctional Services Act, 1959;
- 'correctional supervision' means a community-based punishment to which a person is subject in accordance with Chapter VIIIA of the Correctional Services Act, 1959, and the regulations made under that Act if—
- (a) he has been placed under that under section 6(1)(c);
 - (b) it has been imposed on him under section 276(1)(h) or (i) and he, in the latter case, has been placed under that;
 - (c) his sentence has been converted into that under section 276A(3)(e)(ii) or 287(4)(b) or he has been placed under that under section 287(4)(a);
 - (d) it is a condition on which the passing of his sentence has been postponed and he has been released under section 297(1)(a)(i)(ccA); or
 - (e) it is a condition on which the operation of—
 - (i) the whole or any part; or
 - (ii) any part,
 of his sentence has been suspended under section 297(1)(b) or (4), respectively;".

Amendment of section 6 of Act 51 of 1977

36. Section 6 of the Criminal Procedure Act is hereby amended by the addition of the following paragraph and subsection, the existing section becoming subsection (1):

- "(c) at any time before judgment, whether or not an accused has already
- pleaded to a charge, reconsider the case and upon receipt of a written admission made by the accused in respect of the charge brought against him or a lesser charge, suspend the court proceedings and place such person, with his concurrence, under correctional supervision on such conditions and for such period as may be agreed upon: Provided that—
- (i) where a probation officer or a correctional official is readily available in the court's area of jurisdiction, the powers under this paragraph may only be exercised after a report of such a probation officer or correctional official has been submitted for consideration to the prosecutor concerned;
 - (ii) the powers under this paragraph may only be exercised after consultation with the Commissioner and the police official charged with the investigation of the case and with due regard to the circumstances of the offence, the accused and the interests of the community;
 - (iii) where a prosecution has been instituted under section 8, the suspension of the court proceedings shall be authorized beforehand by the attorney-general;
 - (iv) the provisions of section 106(4) shall not be applicable where such an accused has already pleaded to the charge.
- (2) If the court proceedings which have been suspended under subsection (1)(c) are proceeded with later—
- (a) and the trial has already commenced, the plea which has already been recorded shall stand and the proceedings shall—
 - (i) if the court is similarly constituted, be resumed from where they were suspended; or
 - (ii) if the court is differently constituted, be proceeded with *de novo*;
 - (b) the written admission referred to in subsection (1)(c) may not be used against such an accused during the prosecution."

Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979

37. Section 50 of the Criminal Procedure Act is hereby amended by the addition of the following subsections:

- "(4) The parent or guardian of a person under the age of eighteen years shall, if it is known that such parent or guardian can readily be reached or can

be traced without undue delay, be notified forthwith of the arrest of such person by the police official charged with the investigation of the case.

(5) The probation officer in whose area of jurisdiction the arrest of a person under the age of eighteen years has taken place, shall as soon as possible thereafter be notified thereof by the police official charged with the investigation of the case or, if there is no such probation officer or if he is not available and there is a correctional official who is doing duty in the area concerned and who is available, the latter shall as soon as possible thereafter be notified thereof.”

Amendment of section 62 of Act 51 of 1977

38. Section 62 of the Criminal Procedure Act is hereby amended by the addition of the following paragraph:

“(f) which provides that the accused shall be placed under the supervision of a probation officer or a correctional official.”

Substitution of section 71 of Act 51 of 1977, as substituted by section 4 of Act 26 of 1987

39. The following section is hereby substituted for section 71 of the Criminal Procedure Act:

“Juvenile may be placed in place of safety or under supervision in lieu of release on bail or detention in custody

71. If an accused under the age of eighteen years is in custody in respect of any offence, and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or court may, instead of releasing the accused on bail or detaining him in custody, place the accused in a place of safety as defined in section 1 of the Child Care Act, 1983 (Act 74 of 1983), or place him under the supervision of a probation officer or a correctional official, pending his appearance or further appearance before a court in respect of the offence in question or until he is otherwise dealt with in accordance with law.”

Amendment of section 212 of Act 51 of 1977, as amended by section 12 of Act 56 of 1979 and sections 46 and 47 of Act 97 of 1986

40. Section 212 of the Criminal Procedure Act is hereby amended by the substitution in paragraph (a) of subsection (4) for the words preceding the proviso of the following words:

“Whenever any fact established by any examination or process requiring any skill in biology, chemistry, physics, astronomy, geography, anatomy, human behavioural sciences, any branch of pathology or in toxicology or in the identification of finger-prints, or palm-prints, is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the State or of a provincial administration or is in the service of or is attached to the South African Institute for Medical Research or any university in the Republic or any other body designated by the Minister for the purposes of this subsection by notice in the Gazette, and that he has established such fact by means of such an examination or process, shall, upon its mere production at such proceedings, be prima facie proof of such fact:”

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990

41. Section 276 of the Criminal Procedure Act is hereby amended—

(a) by the addition to subsection (1) of the following paragraphs:

“(h) correctional supervision;

(i) imprisonment from which such a person may be placed under correctional supervision in his discretion by the Commissioner.”;

and

(b) by the addition of the following subsection:

“(3) The provisions of subsection (1) shall not be construed as prohibiting the court from imposing imprisonment together with correctional supervision.”.

Insertion of section 276A in Act 51 of 1977

42. The following section is hereby inserted in the Criminal Procedure Act after section 276:

“**Imposition of correctional supervision, and conversion of imprisonment into correctional supervision and vice versa**

276A. (1) Punishment shall only be imposed under section 276(1)(h)—

(a) after a report of a probation officer or a correctional official has been placed before the court; and

(b) for a fixed period not exceeding three years.

(2) Punishment shall only be imposed under section 276(1)(i)—

(a) if the court is of the opinion that the offence justifies the imposing of imprisonment, with or without the option of a fine, for a period not exceeding five years; and

(b) for a fixed period not exceeding five years.

(3) (a) Where a person has been sentenced by a court to imprisonment for a period—

(i) not exceeding five years; or

(ii) exceeding five years, but his date of release in terms of the provisions of the Correctional Services Act, 1959 (Act 8 of 1959), and the regulations made thereunder is not more than five years in the future,

the Commissioner may, if he is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk of the court to have that person appear before the court *a quo* in order to reconsider the said sentence.

(b) On receipt of any application referred to in paragraph (a) the clerk of the court shall, after consultation with the prosecutor, set the matter down for a specific date on the roll of the court concerned.

(c) The clerk of the court shall for purposes of the reconsideration of the sentence in accordance with this subsection—

(i) within a reasonable time before the date referred to in paragraph (b) submit the case record to the judicial officer who imposed the sentence or, if he is not available, another judicial officer of the same court: Provided that if the evidence in the case has been recorded by mechanical means, only such parts of the record as may be indicated as necessary by such a judicial officer, shall be transcribed for the purposes of this subsection;

(ii) inform the Commissioner in writing of the date for which the matter has been set down on the roll and request him to furnish him with a written motivated recommendation before that date for submission to the judicial officer; and

(iii) submit any recommendation referred to in subparagraph (ii) to that judicial officer.

(d) Whenever a court reconsiders a sentence in terms of this subsection, it shall have the same powers as if it were considering sentence after conviction of a person and the procedure adopted at

such proceedings shall apply *mutatis mutandis* during such reconsideration: Provided that if the person concerned concurs thereto in writing, the proceedings contemplated in this subsection may be concluded in his absence: Provided further that he may nevertheless be represented at such proceedings or cause to submit written representations to the court.

(e) After a court has reconsidered a sentence in terms of this subsection, it may—

- (i) confirm the sentence or order of the court *a quo*;
- (ii) convert the sentence into correctional supervision on the conditions it may deem fit; or
- (iii) impose any other proper sentence:

Provided that the last-mentioned sentence, if imprisonment, shall not exceed the period of the unexpired portion of imprisonment still to be served at that point.

(4) (a) A court, whether constituted differently or not, which has imposed a punishment referred to in subsection (1) or (2) on a person or has converted his sentence under subsection (3)(e)(ii), may at any time, if it is found from a motivated recommendation by a probation officer or the Commissioner that that person is not fit to be subject to correctional supervision or to serve the imposed punishment, reconsider that punishment and impose any other proper punishment.

(b) The procedure referred to in subsection (3) shall apply *mutatis mutandis* to the reconsideration of any punishment under this subsection.”.

Amendment of section 287 of Act 51 of 1977

43. Section 287 of the Criminal Procedure Act is hereby amended by the addition of the following subsection:

“(4) Unless the court which has imposed a period of imprisonment as an alternative to a fine has directed otherwise, the Commissioner may in his discretion at the commencement of the alternative punishment or at any point thereafter, if it does not exceed five years—

- (a) act as if the person were sentenced to imprisonment as referred to in section 276(1)(i); or
- (b) apply in accordance with the provisions of section 276A(3) for the sentence to be reconsidered by the court *a quo*, and thereupon the provisions of section 276A(3) shall apply *mutatis mutandis* to such a case.”.

Amendment of section 290 of Act 51 of 1977, as amended by section 9 of Act 26 of 1987 and section 7 of Act 107 of 1990

44. Section 290 of the Criminal Procedure Act is hereby amended—

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

“(a) order that he be placed under the supervision of a probation officer or a correctional official; or”; and

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

“(3) Any court in which a person of or over the age of eighteen years but under the age of twenty-one years is convicted of any offence may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or a correctional official or that he be sent to a reform school as defined in section 1 of the Child Care Act, 1983.”.

Amendment of section 291 of Act 51 of 1977, as substituted by section 10 of Act 26 of 1987

45. Section 291 of the Criminal Procedure Act is hereby amended by the addition of the following subsection:

“(5) (a) Where a court has dealt with a person under section 290(1) or (3) and such a person is later found not fit to be subject to such an order, such person may be dealt with *mutatis mutandis* in accordance with the provisions of section 276A(4). 5

(b) For the purposes of the provisions of paragraph (a) the expression ‘a probation officer or the Commissioner’ in section 276A(4) shall be construed as the probation officer or correctional official or person concerned, or the person at the head of the reform school concerned or a person authorized by him, as the case may be.”

Amendment of section 296 of Act 51 of 1977, as amended by section 15 of Act 56 of 1979, section 7 of Act 64 of 1982 and section 11 of Act 26 of 1987 10

46. Section 296 of the Criminal Procedure Act is hereby amended by the addition of the following subsection:

“(3) (a) Where a court has referred a person to a rehabilitation centre under subsection (1) and such person is later found not to be fit for treatment in such rehabilitation centre, such person may be dealt with *mutatis mutandis* in accordance with the provisions of section 276A(4). 15

(b) For the purposes of the provisions of paragraph (a) the expression ‘a probation officer or the Commissioner’ in section 276A(4) shall be construed as the person at the head of the rehabilitation centre or a person authorized by him.” 20

Amendment of section 297 of Act 51 of 1977, as amended by section 21 of Act 59 of 1983 and section 20 of Act 33 of 1986

47. Section 297 of the Criminal Procedure Act is hereby amended by the insertion in subsection (1) after item (cc) of subparagraph (i) of paragraph (a) of the following item: 25

“(ccA) submission to correctional supervision;”

Power of Minister of Justice to make regulations

48. (1) The Minister of Justice may make regulations regulating the following matters in respect of the commencement of this Act: 30

(a) The establishment of one or more pilot projects in certain areas so as to launch correctional supervision as an alternative dispensation in lieu of prosecution or upon passing sentence;

(b) the establishment, constitution, powers, functions and duties of and the remuneration of the members of an implementation committee and one or more boards to advise the Minister of Justice regarding the establishment of such pilot projects; and 35

(c) in general any matter which he may deem necessary or expedient to prescribe in order to establish correctional supervision as an alternative dispensation in lieu of prosecution or upon passing sentence. 40

(2) Any regulation contemplated in subsection (1) affecting State expenditure shall be made only with the concurrence of the Minister of State Expenditure.

Savings

49. An institutional committee, release board or advisory release board established by or under any provision replaced by this Act, shall, notwithstanding such replacement, continue with its functions in the same manner and under the same circumstances after the commencement of such replacing provision as if the latter provision had not been passed, until the Minister may by notice in the *Gazette* determine that the functions of that institutional committee, release board or advisory release board, as the case may be, shall terminate for any area defined by him in such notice from a date fixed by him and specified in such notice. 45 50

Act No. 122, 1991

CORRECTIONAL SERVICES AND SUPERVISION
MATTERS AMENDMENT ACT, 1991**Short title and commencement**

50. (1) This Act shall be called the Correctional Services and Supervision Matters Amendment Act, 1991, 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 and areas of the Republic. 5