

CORRECTIONAL SERVICES ACT NO. 111 OF 1998

[ASSENTED TO 19 NOVEMBER, 1998]
[DATE OF COMMENCEMENT: 31 JULY, 2004]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 35093 dated 1 March, 2012.

as amended by

Correctional Services Amendment Act, No. 32 of 2001

Institution of Legal Proceedings against certain Organs of State Act, No. 40 of 2002
[with effect from 28 November, 2002—see title PRESCRIPTION]

Judicial Matters Amendment Act, No. 55 of 2002
[with effect from 17 January, 2003 (unless otherwise indicated)—see title COURTS]

Correctional Services Amendment Act, No. 25 of 2008

Child Justice Act, No. 75 of 2008
[with effect from 1 April, 2010—see title CHILDREN]

Correctional Matters Amendment Act, No. 5 of 2011

proposed amendments by

Correctional Services Amendment Act, No. 25 of 2008 (provisions not yet proclaimed)	
<i>Proposed amendments by</i>	<i>Sections to be amended</i>
S. 21 of Act No. 25 of 2008	S. 27 of Act No. 111 of 1998

Correctional Matters Amendment Act, No. 5 of 2011 (provisions not yet proclaimed)	
<i>Proposed amendments by</i>	<i>Sections to be amended</i>
S. 9 of Act No. 5 of 2011	S. 48 of Act No. 111 of 1998
S. 9 of Act No. 5 of 2011	Inserts ss. 49E and 49G in Act No. 111 of 1998

GENERAL NOTE

In terms of s. 86 (a) of Act No. 25 of 2008, the words “Area Manager”, “Commissioner”, “Head of Prison”, “imprisonment”, “Independant Prison Visitor”, “Independant Prison Visitors”, “joint venture prison”, “joint venture prisons” “medical officer”, “prison”, “prisons”, “Provincial Commissioner”, “sentenced prisoner”, “sentenced prisoners” and “unsentenced prisoners” wherever they occur in the Act, are substituted with the words “National Commissioner”, “National Commissioner”, “Head of the Correctional Centre”, “incarceration”, “Independent Correctional Centre Visitor”, “Independent Correctional Centre Visitors”, “public-private partnership correctional centre”, “public-private

partnership correctional centres”, “correctional medical practitioner”, “correctional centre”, “correctional centres”, “Regional Commissioner”, “sentenced offender”, “sentenced offenders”, “unsentenced offenders”, respectively.

In terms of s. 86 (b) of Act No. 25 of 2008, the words “prisoner or prisoners”, wherever they occur in sections 4 to 24, 26 to 34, 99, 101, 115 to 123, 134 (1) (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (n), (o), (oA), (oB), (r), (s), (2) (a), (b), (j), (k), (w) and (y) are substituted with the words “inmate or inmates”, respectively and the words “prisoner or prisoners”, wherever they occur in sections 37 to 45, 54, 73, 75, 80, 81, 82, 104, 106, 133, 134 (1) (p), (t), (bb), (cc), (ee), (x) and 136 (2) and (3) are substituted with the words “sentenced offender or sentenced offenders”, respectively.

ACT

To provide for a correctional system; the establishment, functions and control of the Department of Correctional Services; the custody of all offenders under conditions of human dignity; the rights and obligations of sentenced offenders; the rights and obligations of unsentenced offenders; a system of community corrections; release from correctional centre and placement under correctional supervision, on day parole and parole; a National Council for Correctional Services; a Judicial Inspectorate; Independent Correctional Centre Visitors; an internal service evaluation; officials of the Department; public-private partnership correctional centre; penalties for offences; the repeal and amendment of certain laws; and matters connected therewith.

Preamble.—WITH THE OBJECT of changing the law governing the correctional system and giving effect to the Bill of Rights in the Constitution, 1996, and in particular its provisions with regard to offenders;

RECOGNISING—

international principles on correctional matters;

REGULATING—

the release of offenders and the system of community corrections;

in general, the activities of the Department of Correctional Services; and

PROVIDING—

for independent mechanisms to investigate and scrutinise the activities of the Department of Correctional Services:

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CHAPTER I
DEFINITIONS

1. Definitions.—

“**amenities**” means recreational and other activities, diversions or privileges which are granted to inmates in addition to what they are entitled to as of right and in terms of this Act, and includes—

- (a) exercise;
- (b) contact with the community;
- (c) reading material;
- (d) recreation; and
- (e) incentive schemes;

[Definition of “amenities” substituted by s. 1 (a) of Act No. 32 of 2001 and s. 1 (a) of Act No. 25 of 2008.]

“Area Manager”

[Definition of “Area Manager” deleted by s. 1 (b) of Act No. 25 of 2008.]

“Assistants” means persons appointed under section 87 to assist the Inspecting Judge;

“authorised official” means a correctional official authorised by a Head of the Correctional Centre to conduct disciplinary proceedings as contemplated in section 24;

[Definition of “authorised official” inserted by s. 1 (b) of Act No. 32 of 2001.]

“care” means the provision of services and programmes aimed at enhancing and maintaining the social, mental, spiritual, health and physical well-being of inmates;

[Definition of “care” inserted by s. 1 (c) of Act No. 25 of 2008.]

“Case Management Committee” means a committee established under section 42;

“child” means a person under the age of 18 years;

“Commissioner”

[Definition of “Commissioner” substituted by s. 1 (c) of Act No. 32 of 2001 and deleted by s. 1 (d) of Act No. 25 of 2008.]

“community corrections” means all non-custodial measures and forms of supervision applicable to persons who are subject to such measures and supervision in the community and who are under the control of the Department;

“community corrections office” means a place designated by the National Commissioner for the administration and management of community corrections;

“community service” means compulsory work for a community organisation or other compulsory work of value to the community, performed without payment;

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“contract”, in relation to a public-private partnership correctional centre, means a contract for the design, construction, financing or operation of that correctional centres envisaged in section 103;

“Contractor”, in relation to a public-private partnership correctional centre, means any party who has contracted with the State for the design, construction, financing or operating of a correctional centre;

“Controller” means a correctional official on or above the post level of senior correctional official in the employ of the Department and employed under section 105;

[Definition of “Controller” substituted by s. 1 (d) of Act No. 32 of 2001.]

“correction” means provision of services and programmes aimed at correcting the offending behaviour of sentenced offenders in order to rehabilitate them;

[Definition of “correction” inserted by s. 1 (e) of Act No. 25 of 2008.]

“correctional centre” means any place established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to placement under protective custody, and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of incarceration, detention, protection, labour, treatment or otherwise, and all quarters of correctional officials used in connection with any such correctional centre, and for the purpose of sections 115 and 117 includes every place used as a police cell or lock-up;

[Definition of “correctional centre” inserted by s. 1 (e) of Act No. 25 of 2008.]

“correctional medical practitioner” means a medical practitioner registered in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), and appointed in terms of section 3 (4);

[Definition of “correctional medical practitioner” inserted by s. 1 (e) of Act No. 25 of 2008.]

“correctional official” means an employee of the Department appointed under section 3 (4);

“correctional supervision” means a form of community corrections contemplated in Chapter VI;

“Correctional Supervision and Parole Board” means a board appointed by the Minister under section 74;

“Correctional Supervision and Parole Review Board” means a board selected under section 76;

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“custody official” means an employee of a Contractor who is certified to carry out custodial duties at a public-private partnership correctional centre, and may include an employee of a subcontractor who is so certified;

“day parole” means a form of community corrections contemplated in section 54;

“Department” means the Department of Correctional Services;

“development” means the provision of services and programmes aimed at developing and enhancing competencies and skills that will enable the sentenced offender to re-integrate into the community;

[Definition of “development” inserted by s. 1 (f) of Act No. 25 of 2008.]

“Director” means an employee of the Contractor appointed in terms of section 108;

“disability” means a physical, mental, intellectual or sensory impairment which prevents a person having such an impairment from operating in an environment developed for persons without such an impairment;

[Definition of “disability” inserted by s. 1 (e) of Act No. 32 of 2001 and substituted by s. 1 (g) of Act No. 25 of 2008.]

“disciplinary official” means a correctional official of the rank of assistant director or above, or where such official is not available a correctional official specially trained in the conduct of disciplinary hearings of offenders, appointed by the National Commissioner in terms of section 24;

“habitual criminal” means a person referred to in section 286 of the Criminal Procedure Act;

“Head of Community Corrections” means a correctional official designated by the National Commissioner to manage and control community corrections at a community corrections office;

“Head of the Correctional Centre” means a correctional official designated by the National Commissioner to manage and control a particular correctional centre;

[Definition of “Head of the Correctional Centre” previously “Head of Prison” substituted by s. 1 (h) of Act No. 25 of 2008.]

“house detention” means a requirement relating to community corrections contemplated in section 59;

“Independent Correctional Centre Visitor” means a person appointed under section 92;

[Definition of “Independent Correctional Centre Visitor” previously “Independent Prison Visitor” substituted by s. 1 (i) of Act No. 25 of 2008.]

“inmate” means any person, whether convicted or not, who is detained in custody in any correctional centre or remand detention facility or who is being transferred in custody or is en route from one correctional centre or remand detention facility to another correctional centre or remand detention facility;

[Definition of “inmate” inserted by s. 1 (j) of Act No. 25 of 2008 and amended by s. 1 (a) of Act No. 5 of 2011.]

“Inspecting Judge” means a person appointed under section 86;

“joint venture prison”

[Definition of “joint venture prison” deleted by s. 1 (k) of Act No. 25 of 2008.]

“Judicial Inspectorate” means the inspectorate established under section 85;

“Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995);

“legal practitioner” means any person admitted to practice as an advocate or an attorney in the Republic;

“management area” means an area determined by a Provincial National Commissioner, which consists of one or more correctional centres or offices and which is under the control of a correctional official designated as an National Commissioner;

“mechanical restraints” means a device which limits or prevents freedom of physical movement;

[Definition of “mechanical restraints” inserted by s. 1 (l) of Act No. 25 of 2008.]

“medical officer”

[Definition of “medical officer” deleted by s. 1 (m) of Act No. 25 of 2008.]

“medical practitioner” means a medical practitioner as defined in section 1 of the Health Professions Act, 1974 (Act No. 56 of 1974);

“medical treatment” means treatment, regimen or intervention prescribed by a medical practitioner, dentist or psychologist as defined in section 1 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

“Minister” means the Minister of Correctional Services;

“mother and child unit” means a unit within a correctional centre where provision is made for separate sleeping accommodation for mother and child, as well as a crèche facility, and where the focus is on the normalisation of the environment in order to promote the child’s physical and emotional development and care;

“National Commissioner” means the National Commissioner of Correctional Services contemplated in section 3 (3);

[Definition of “National Commissioner” inserted by s. 1 (n) of Act No. 25 of 2008.]

“National Council” means the National Council for Correctional Services, established under section 83;

“needs-based programmes” means programmes that are developed or rendered according to the identified specific needs of offenders;

[Definition of “needs-based programmes” inserted by s. 1 (o) of Act No. 25 of 2008.]

“non-parole period” means the period as defined in section 276B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“other body”, means either—

- (a) the National Director of Public Prosecutions or his or her delegate acting in terms of sections 41 or 53 (3) of the Child Justice Act, 2008, (Act No. 75 of 2008); or
- (b) the Correctional Supervision and Parole Review Board acting under section 77 (1) of the Act,

as the case may be;

[Definition of “other body” inserted by s. 1 (b) of Act No. 5 of 2011.]

“parole” means a form of community corrections contemplated in Chapter VI;

“periodical incarceration” means a sentence imposed in terms of section 285 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“prison”

[Definition of “prison” deleted by s. 1 (p) of Act No. 25 of 2008.]

“prisoner”

[Definition of “prisoner” deleted by s. 1 (q) of Act No. 25 of 2008.]

“professionals” means persons registered under the Nursing Act, 1978 (Act No. 50 of 1978), Chiropractors, Homeopaths and Allied Health Service Professions Act, 1982 (Act No. 63 of 1982), Pharmacy Act, 1974 (Act No. 53 of 1974), Health Professions Act, 1974 (Act No. 56 of 1974), and the Social Work Act, 1978 (Act No. 110 of 1978);

“Provincial Commissioner”

[Definition of “Provincial Commissioner” deleted by s. 1 (r) of Act No. 25 of 2008.]

“psychologist” means a psychologist as defined in section 1 of the Health Professions Act, 1974 (Act No. 56 of 1974);

“publication” means—

- (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
- (b) any writing or typescript which has been duplicated in any manner;
- (c) any drawing, picture, illustration or painting;
- (d) any print, photograph, engraving or lithograph;
- (e) any record, magnetic tape, sound-track or any other object in or on which sound has been recorded for reproduction;
- (f) computer software;
- (g) the cover or packaging of a film; and
- (h) any figure, carving, statue or model;

“public-private partnership correctional centre” means a correctional centre or part of a correctional centre referred to in section 103;

[Definition of “public-private partnership correctional centre” inserted by s. 1 (s) of Act No. 25 of 2008.]

“Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“register” means any physical, written or typed record or any data contained in the random access memory of a computer or stored by any computer on any storage medium;

“registered nurse” means a person registered as a nurse under section 16 of the Nursing Act, 1978 (Act No. 50 of 1978), and excludes any reference to the “nursing auxiliary” and “enrolled nurse”, enrolled under the provisions of the said section;

“remand detainee”—

- (a) means a person detained in a remand detention facility awaiting the finalisation of his or her trial, whether by acquittal or sentence, if such person has not commenced serving a sentence or is not already serving a prior sentence; and
- (b) includes a person contemplated in section 9 of the Extradition Act, 1962, (Act No. 67 of 1962), detained for the purposes of extradition;

[Definition of “remand detainee” inserted by s. 1 (c) of Act No. 5 of 2011.]

“remand detention facility” means a place established under this Act as a place for the reception, detention or confinement of a person liable to detention in custody, and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of detention, protection, treatment or otherwise, and all quarters used by correctional officials in connection with any such remand detention facility, and for the purpose of sections 115 and 117 includes every place used as a police cell or lock-up;

[Definition of “remand detention facility” inserted by s. 1 (c) of Act No. 5 of 2011.]

“remand detention official” means an employee of the Department appointed under section 3 (4) at a remand detention facility or transferred to a remand detention facility;

[Definition of “remand detention official” inserted by s. 1 (c) of Act No. 5 of 2011.]

“senior correctional official”

[Definition of “senior correctional official” deleted by s. 1 (f) of Act No. 32 of 2001.]

“sentenced offender” means a convicted person sentenced to incarceration or correctional supervision;

[Definition of “sentenced offender” previously “sentenced prisoner” substituted by s. 1 (t) of Act No. 25 of 2008.]

“solitary confinement” means being held in a single cell with loss of all amenities;

“specialist medical practitioner” means a person registered in respect of any profession under the Health Professions Act, 1974, (Act No. 56 of 1974), to whom the definition ‘speciality’ applies under that Act;

[Definition of “specialist medical practitioner” inserted by s. 1 (d) of Act No. 5 of 2011.]

“Supervision Committee” means a committee established under section 58;

“Temporary Manager” means a correctional official on or above the post level of senior correctional official in the employ of the Department appointed for the purposes referred to in section 112;

[Definition of “Temporary Manager” substituted by s. 1 (g) of Act No. 32 of 2001.]

“this Act” includes the regulations and orders promulgated under this Act;

[Definition of “this Act” inserted by s. 1 (h) of Act No. 32 of 2001.]

“unsentenced offender” means any person who is lawfully detained in a correctional centre and who has been convicted of an offence, but who has not been sentenced to incarceration or correctional supervision;

[Definition of “unsentenced offender” previously “unsentenced prisoner” substituted by s. 1 (u) of Act No. 25 of 2008.]

“Visitors’ Committee” means a committee appointed under section 94.

(Date of commencement of s. 1: 19 February, 1999.)

CHAPTER II INTRODUCTION

2. Purpose of correctional system.—The purpose of the correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by—

- (a) enforcing sentences of the courts in the manner prescribed by this Act;
- (b) detaining all inmates in safe custody whilst ensuring their human dignity;
and

[Para. (b) substituted by s. 2 of Act No. 25 of 2008.]

- (c) promoting the social responsibility and human development of all sentenced offenders.

[Para. (c) substituted by s. 2 of Act No. 25 of 2008.]

3. Establishment, functions and control of Department.—(1) The Department of Correctional Services, established by section 7 (2) of the Public Service Act, is part of the Public Service, established by section 197 of the Constitution.

(2) The Department must—

- (a) fulfil the purpose of the correctional system in terms of this Act;

- (b) as far as practicable, be self-sufficient and operate according to business principles;
- (c) perform all work necessary for its effective management; and
- (d) manage remand detainees.

[Sub-s. (2) substituted by s. 2 of Act No. 5 of 2011.]

(3) The National Commissioner of Correctional Services is appointed in terms of the Public Service Act, but the conditions of service of the National Commissioner are governed by this Act and he or she is also entitled to the privileges of a head of a department which are conferred by the Public Service Act.

(4) The Department consists of the National Commissioner, other correctional officials appointed by the National Commissioner in terms of this Act and other employees appointed in terms of the Public Service Act.

(5) The Department is under the control of the National Commissioner, who must, without derogating from the generality of subsection (2)—

- (a) determine the fixed establishment of the Department and the number and grading of posts;
- (b) determine the distribution of the numerical strength of the Department;
- (c) organise or reorganise the Department at a national or provincial level into various components, units or groups;
- (d) establish and maintain training institutions or centres for the training of students or correctional officials;
- (e) award to any person who is or was a correctional official such monetary or other reward for exceptional ability or possessing special qualifications or rendering meritorious service, as is, in his or her opinion, a fitting reward;
- (f) award a monetary or other reward to any person who performs an act which promotes the interests of the Department;
- (g) appoint, remunerate, promote, transfer, discipline or dismiss correctional officials in accordance with this Act, the Labour Relations Act and the Public Service Act; and

[Para. (g) substituted by s. 2 (a) of Act No. 32 of 2001.]

- (h) enter into collective agreements as provided for in the Labour Relations Act pertaining to matters within his or her authority.

[Para. (h) added by s. 2 (b) of Act No. 32 of 2001.]

(6) The National Commissioner and correctional officials must perform the functions of the Department as prescribed in this Act, subject to such policy as the Minister may determine.

(Date of commencement of s. 3: 25 February, 2000.)

CHAPTER III CUSTODY OF ALL INMATES UNDER CONDITIONS OF HUMAN DIGNITY

[Heading substituted by s. 3 of Act No. 25 of 2008.]

Part A *General requirements*

4. Approach to safe custody.—(1) Every inmate is required to accept the authority and to obey the lawful instructions of the National Commissioner and correctional officials of the Department and custody officials.

(2) (a) The Department must take such steps as are necessary to ensure the safe custody of every inmate and to maintain security and good order in every correctional centre.

(b) The duties and restrictions imposed on inmates to ensure safe custody by maintaining security and good order must be applied in a manner that conforms with their purpose and which does not affect the inmates to a greater degree or for a longer period than necessary.

[Para. (b) substituted by s. 3 of Act No. 32 of 2001.]

(c) The minimum rights of inmates entrenched in this Act must not be violated or restricted for disciplinary or any other purpose, but the National Commissioner may restrict, suspend or revise amenities for inmates of different categories.

[Para. (c) substituted by s. 3 of Act No. 32 of 2001.]

5. Establishment of correctional centres.—(1) The Minister may by notice in the *Gazette*, establish and review the establishment of correctional centres and remand detention facilities for—

(a) the detention and treatment of inmates;

[Para. (a) substituted by s. 4 (a) of Act No. 25 of 2008.]

(b) particular purposes in relation to inmates; or

[Para. (b) substituted by s. 4 (a) of Act No. 25 of 2008.]

(c) particular categories of inmates.

[Sub-s. (1) substituted by s. 4 of Act No. 32 of 2001, by s. 4 (a) of Act No. 25 of 2008 and amended by s. 3 (a) of Act No. 5 of 2011.]

(2) (a) Any correctional centre or remand detention facility established under subsection (1) may serve one or more districts as circumstances may require, and for the purposes of any law relating to magistrates' courts any correctional centre or remand detention facility established to serve more than one district is deemed to be the correctional centre or remand detention facility of each district served by that correctional centre or remand detention facility.

(b) If there is no correctional centre or remand detention facility in a district an inmate may be detained in a police cell but not for a period longer than seven days.

[Sub-s. (2) amended by s. 4 (b) of Act No. 25 of 2008 and substituted by s. 3 (b) of Act No. 5 of 2011.]

(Date of commencement of s. 5: 1 July, 1999.)

6. Admission.—(1) (a) A person may not be committed to a correctional centre without a valid warrant for his or her detention.

(b) Despite the wording of the warrant relating to the place of detention but subject to the provisions of this Act, such warrant authorises the National Commissioner to detain the person concerned at any correctional centre.

(2) At every correctional centre there must be a register in which the following must be recorded:

(a) information concerning the identity of the inmate;

(b) the reason for the committal and the authority therefor; and

(c) the day and hour of admission and release.

(3) On admission, an inmate must be informed promptly of his or her right to—

(a) choose and consult with a legal practitioner; or

(b) have a legal practitioner assigned by the State, at state expense, if substantial injustice would otherwise result.

[Sub-s. (3) amended by s. 5 (a) of Act No. 25 of 2008.]

(4) (a) On admission an inmate must be provided with written information in a language which he or she understands about the rules governing the treatment of the inmates in his or her category, the disciplinary requirements, the authorised channels of communication for complaints and requests and all such other matters as are necessary to enable him or her to understand his or her rights and obligations.

[Para. (a) substituted by s. 5 (b) of Act No. 25 of 2008.]

(b) If an inmate is illiterate, a correctional official must explain this written information to the inmate, if necessary through an interpreter.

[Para. (b) substituted by s. 5 (b) of Act No. 25 of 2008.]

(c) The inmate must confirm that he or she has understood the information so conveyed.

(5) As soon as possible after admission, every inmate must—

(a) bath or shower, and

(b) undergo a health status examination, which must include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act No. 63 of 1977), if in the opinion of the correctional medical practitioner it is necessary to protect or maintain the health of the inmates or other persons.

[Sub-s. (5) substituted by s. 5 of Act No. 32 of 2001.]

(6) On admission the National Commissioner must make a preliminary security classification of the inmate.

7. Accommodation.—(1) Inmates must be held in cells which meet the requirements prescribed by regulation in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions. These requirements must be adequate for detention under conditions of human dignity.

[Sub-s. (1) substituted by s. 6 (a) of Act No. 25 of 2008.]

(2) (a) Sentenced inmates must be kept separate from persons awaiting trial or sentence.

(b) Male inmates must be kept separate from female inmates.

(c) Inmates who are children must be kept separate from adult inmates and in accommodation appropriate to their age.

(d) The National Commissioner may detain inmates of specific age, health or security risk categories separately.

(e) The National Commissioner may accommodate inmates in single or communal cells depending on the availability of accommodation.

(f) Where there is a danger of persons who are awaiting trial or sentence defeating the ends of justice by their association with each other, the National Commissioner must detain them apart.

[Sub-s. (2) amended by s. 6 of Act No. 32 of 2001 and substituted by s. 6 (b) of Act No. 25 of 2008.]

(3) There may be departures from the provisions of subsection (2) (a) to (c) if such departures are approved by the Head of the Correctional Centre and effected under supervision of a correctional official and are undertaken for the purpose of providing development or support services or medical treatment, but under no circumstances may there be departures in respect of sleeping accommodation.

8. Nutrition.—(1) Each inmate must be provided with an adequate diet to promote good health, as prescribed in the regulations.

(2) Such diet must make provision for the nutritional requirements of children, pregnant women and any other category of inmates whose physical condition requires a special diet.

(3) Where reasonably practicable, dietary regulations must take into account religious requirements and cultural preferences.

(4) The correctional medical practitioner may order a variation in the prescribed diet for an inmate and the intervals at which the food is served, when such a variation is required for medical reasons.

[Sub-s. (4) substituted by s. 7 of Act No. 25 of 2008.]

(5) Food must be well prepared and served at intervals of not less than four and a half hours and not more than six and a half hours, except that there may be an interval of not more than 14 hours between the evening meal and breakfast.

[Sub-s. (5) substituted by s. 7 of Act No. 32 of 2001.]

(6) Clean drinking water must be available to every inmate.

9. Hygiene.—(1) Every inmate must keep his or her person, clothing, bedding and cell clean and tidy.

(2) The Department must provide the means to do so.

10. Clothing and bedding.—(1) The Department must provide every inmate with clothing and bedding sufficient to meet the requirements of hygiene and climatic conditions.

(2)

[Sub-s. (2) deleted by s. 4 of Act No. 5 of 2011.]

11. Exercise.—Every inmate must be given the opportunity to exercise sufficiently in order to remain healthy and is entitled to at least one hour of exercise daily. If the weather permits, this exercise must take place in the open air.

12. Health care.—(1) The Department must provide, within its available resources, adequate health care services, based on the principles of primary health care, in order to allow every inmate to lead a healthy life.

(2) (a) Every inmate has the right to adequate medical treatment but no inmate is entitled to cosmetic medical treatment at State expense.

(b) Medical treatment must be provided by a correctional medical practitioner, medical practitioners or by a specialist or health care institution or person or institution identified by such correctional medical practitioner except where the medical treatment is provided by a medical practitioner in terms of subsection (3).

(3) Every inmate may be visited and examined by a medical practitioner of his or her choice and, subject to the permission of the Head of the Correctional Centre, may be

treated by such practitioner, in which event the inmate is personally liable for the costs of any such consultation, examination, service or treatment.

(4) (a) Every inmate should be encouraged to undergo medical treatment necessary for the maintenance or recovery of his or her health.

(b) No inmate may be compelled to undergo medical intervention or treatment without informed consent unless failure to submit to such medical intervention or treatment will pose a threat to the health of other persons.

[Para. (b) substituted by s. 8 of Act No. 32 of 2001.]

(c) Except as provided in paragraph (d), no surgery may be performed on an inmate without his or her informed consent, or, in the case of a minor, without the written consent of his or her legal guardian.

[Para. (c) substituted by s. 8 of Act No. 25 of 2008.]

(d) Consent to surgery is not required if, in the opinion of the medical practitioner who is treating the inmate, the intervention is in the interests of the inmate's health and the inmate is unable to give such consent, or, in the case of a minor, if it is not possible or practical to delay it in order to obtain the consent of his or her legal guardian.

13. Contact with community.—(1) The Department must encourage inmates to maintain contact with the community and enable them to stay abreast of current affairs.

(2) The Department must give inmates the opportunity, under such supervision as may be necessary, of communicating with and being visited by at least their spouses or partners, next of kin, chosen religious counsellors and chosen medical practitioners.

(3) In all circumstances, a minimum of one hour must be allowed for visits each month.

(4) If an inmate is not able to receive visits from his or her spouse, partner or next of kin, the inmate is entitled to be visited by any other person each month.

(5) An inmate who is a foreign national must be allowed to communicate with the appropriate diplomatic or consular representative or, where there is no such representative, with a diplomatic representative of the state or international organisation whose task it is to protect the interests of such inmate.

(6) (a) On admission to a correctional centre and after transfer to another correctional centre, an inmate must notify his or her next of kin that he or she is being detained in a particular correctional centre, and if—

- (i) the next of kin is unknown, the inmate may notify any other relative;
- (ii) the inmate does not wish to notify his or her next of kin, the inmate must indicate this to the Head of the Correctional Centre.

(b) The National Commissioner must ensure that all reasonable steps are taken to enable an inmate to notify his or her next of kin in terms of paragraph (a) and, if necessary, steps must be taken to notify his or her next of kin on his or her behalf.

(c) (i) In the case of an inmate who is a child, the National Commissioner must notify the appropriate state authorities who have statutory responsibility for the education and welfare of children as well as the parents of such child when this is required in terms of paragraph (a).

(ii) If no parent is available, the National Commissioner must notify the legal guardian and if the legal guardian is not available the next of kin or other relative must be notified.

- (iii) An inmate who is a child may not refuse to allow notification.

(d) If requested by the spouse, partner or next of kin, the National Commissioner must as soon as practicable, with the written consent of the inmate, give particulars of the place where the inmate is detained.

(7) (a) The National Commissioner may allow community organisations, non-governmental organisations and religious denominations or organisations to interact with sentenced inmates in order to facilitate the rehabilitation and integration of the inmates into the community.

(b) The organisations or denominations referred to in paragraph (a), must be registered with the Department and members thereof may be screened by the National Commissioner before they can be allowed to interact with sentenced inmates.

[S. 13 substituted by s. 9 of Act No. 25 of 2008.]

14. Religion, belief and opinion.—(1) An inmate must be allowed freedom of conscience, religion, thought, belief and opinion.

[Sub-s. (1) substituted by s. 10 of Act No. 25 of 2008.]

(2) An inmate may attend religious services and meetings held in the correctional centre freely and voluntarily and may have in his or her possession religious literature.

[Sub-s. (2) substituted by s. 10 of Act No. 25 of 2008.]

(3) Where practicable, places of worship must be provided at every correctional centre for inmates of all religious denominations.

(4) No inmate may be compelled to attend religious services or meetings or to take part in religious practices.

15. Death in correctional centre.—(1) Where an inmate dies and a medical practitioner cannot certify that the death was due to natural causes, the Head of the Correctional Centre must in terms of section 2 of the Inquests Act, 1959 (Act No. 58 of 1959), report such death.

[Sub-s. (1) substituted by s. 11 of Act No. 25 of 2008.]

(2) Any death in correctional centre must be reported forthwith to the Inspecting Judge who may carry out or instruct the National Commissioner to conduct any enquiry.

(3) The Head of the Correctional Centre must forthwith inform the next of kin of the inmate who has died or, if the next of kin are unknown, any other relative.

16. Correction, development and care programmes and services.—(1) The Department may provide correction, development and care programmes and services even when not required to do so by this Act.

[Sub-s. (1) substituted by s. 12 (b) of Act No. 25 of 2008.]

(2) In all instances, when the Department does not provide such services, the National Commissioner must inform inmates of services available from other sources and put inmates who request such services in touch with appropriate agencies.

[Sub-s. (2) substituted by s. 12 (b) of Act No. 25 of 2008.]

(3) The Department must take measures, in terms of planning, policy and infrastructure, to accommodate inmates with disabilities in order to enable such inmates, where practicable to fully exercise the rights and to enjoy the amenities to which every inmate is entitled.

[Sub-s. (3) added by s. 9 of Act No. 32 of 2001 and substituted by s. 12 (b) of Act No. 25 of 2008.]

(4) The Department must take measures, in terms of planning, policy and infrastructure, in order to create an environment sensitive to the gender of all inmates.

[S. 16 amended by s. 12 (a) of Act No. 25 of 2008. Sub-s. (4) added by s. 9 of Act No. 32 of 2001.]

17. Access to legal advice.—(1) Every inmate is entitled to consult on any legal matter with a legal practitioner of his or her choice at his or her own expense.

(2) The Minister may, by regulation, impose restrictions on the manner in which such consultations are conducted if such restrictions are necessary for the safe custody of inmates, but legal confidentiality must be respected.

(3) The Head of the Correctional Centre must take reasonable steps to enable inmates to exercise the substantive rights referred to in section 6 (3).

(4) Remand detainees must be provided with the opportunities and facilities to prepare their defence.

[S. 17 substituted by s. 13 of Act No. 25 of 2008. Sub-s. (4) substituted by s. 5 of Act No. 5 of 2011.]

18. Reading material.—(1) Every inmate must be allowed access to available reading material of his or her choice, unless such material constitutes a security risk or is not conducive to his or her rehabilitation.

(2) Such reading material may be drawn from a library in the correctional centre or may be sent to the inmate from outside the correctional centre in a manner prescribed by regulation.

19. Children.—(1) (a) Every inmate who is a child and is subject to compulsory education must attend and have access to such educational programmes.

(b) Where practicable, all children who are inmates not subject to compulsory education must be allowed access to educational programmes.

(2) The National Commissioner must provide every inmate who is a child with social work services, religious care, recreational programmes and psychological services.

(3) The National Commissioner must, if practicable, ensure that inmates who are children remain in contact with their families through additional visits and by other means.

20. Mothers of young children.—(1) A female inmate may be permitted, subject to such conditions as may be prescribed by regulation, to have her child with her until such child is two years of age or until such time that the child can be appropriately placed taking into consideration the best interest of the child.

[Sub-s. (1) substituted by s. 10 of Act No. 32 of 2001 and by s. 14 (a) of Act No. 25 of 2008.]

(1A) Upon admission of such a female inmate the Department must immediately, in conjunction with the Department of Social Development, take the necessary steps to facilitate the process for the proper placement of such a child.

[Sub-s. (1A) inserted by s. 14 (b) of Act No. 25 of 2008.]

(2) The Department is responsible for food, clothing, health care as contemplated in section 12 and facilities for the sound development of the child for the period that such child remains in correctional centre.

[Sub-s. (2) substituted by s. 10 of Act No. 32 of 2001.]

(3) Where practicable, the National Commissioner must ensure that a mother and child unit is available for the accommodation of female inmates and the children whom they may be permitted to have with them.

[Sub-s. (3) substituted by s. 14 (c) of Act No. 25 of 2008.]

21. Complaints and requests.—(1) Every inmate must, on admission and on a daily basis, be given the opportunity of making complaints or requests to the Head of the Correctional Centre or a correctional official authorised to represent such Head of the Correctional Centre.

(2) The official referred to in subsection (1) must—

- (a) record all such complaints and requests and any steps taken in dealing with them;
- (b) deal with complaints and requests promptly and inform the inmate of the outcome; and
- (c) if the complaint concerns an alleged assault, ensure that the inmate undergoes an immediate medical examination and receives the treatment prescribed by the correctional medical practitioner.

[Para. (c) substituted by s. 11 of Act No. 32 of 2001.]

(3) If an inmate is not satisfied with the response to his or her complaint or request, the inmate may indicate this together with the reasons for the dissatisfaction to the Head of the Correctional Centre, who must refer the matter to the National Commissioner.

[Sub-s. (3) substituted by s. 15 of Act No. 25 of 2008.]

(4) The response of the National Commissioner must be conveyed to the inmate.

[Sub-s. (4) substituted by s. 15 of Act No. 25 of 2008.]

(5) If not satisfied with the response of the National Commissioner, the inmate may refer the matter to the Independent Correctional Centre Visitor, who must deal with it in terms of the procedures laid down in section 93.

[Sub-s. (5) substituted by s. 15 of Act No. 25 of 2008.]

Part B *Discipline*

22. General.—(1) Discipline and order must be maintained with firmness but in no greater measure than is necessary for security purposes and good order in correctional centre.

(2) In case of any conviction in a court of law for an offence committed by a person whilst an inmate, the Department, on the strength of such conviction, may without any further inquiry take disciplinary action in terms of this Act.

[Sub-s. (2) substituted by s. 16 of Act No. 25 of 2008.]

(3) Disciplinary action may be taken against any inmate, even though criminal proceedings may be pending or in progress against such inmate.

(4) No inmate must in any way be involved in the implementation of any disciplinary measures.

23. Disciplinary infringements.—(1) An inmate commits a disciplinary infringement if he or she—

- (a) replies dishonestly to legitimate questions put by a correctional official or other person employed in a correctional centre;
- (b) disobeys a lawful command or order by a correctional official or fails to comply with any regulation or order;
- (c) is abusive to any person;

- (d) fails or refuses to perform any labour or other duty imposed or authorised by this Act;
- (e) is careless or negligent with regard to any labour or duty imposed or authorised by this Act;
- (f) uses insulting, obscene or threatening language;
- (g) conducts himself or herself indecently by word, act or gesture;
- (h) commits an assault;
- (i) communicates with any person at a time when or a place where it is prohibited;
- (j) makes unnecessary noise or causes a nuisance;
- (k) without permission leaves the cell or other assigned place;
- (l) in any manner defaces or damages any part of the correctional centre or any article therein or any state property;
- (m) possesses an unauthorised article;
- (n) commits theft;
- (o) creates or participates in a disturbance or foment a mutiny or engages in any other activity that is likely to jeopardise the security or order of a correctional centre;
- (p) professes to be a member of a gang or takes part in gang activities;
- (q) makes a dishonest accusation against a correctional official or fellow inmate;
- (r) conceals, destroys, alters, defaces or disposes of an identification card, document or any issued article;
- (s) commits an act with the intention of endangering his or her life, injuring his or her health or impairing his or her ability to work; or
- (t) attempts to do anything referred to in this section.

[Sub-s. (1) amended by s. 17 (a) of Act No. 25 of 2008.]

(2) An inmate who assists, conspires with or incites another person to contravene a provision of subsection (1) commits a disciplinary infringement.

[Sub-s. (2) substituted by s. 17 (b) of Act No. 25 of 2008.]

24. Procedures and penalties.—(1) Disciplinary hearings must be fair and may be conducted either by a disciplinary official, a Head of the Correctional Centre or an authorised official.

[Sub-s. (1) substituted by s. 12 of Act No. 32 of 2001.]

(2) (a) A hearing before a Head of the Correctional Centre or the authorised official must be conducted informally and without representation.

[Para. (a) substituted by s. 18 (a) of Act No. 25 of 2008.]

(b) At such hearing the inmate must be informed of the allegation against him or her, whereupon the inmate has the right to refute the allegation.

(c) The proceedings of a hearing contemplated in paragraph (a) must be recorded in writing by a correctional official.

[Sub-s. (2) substituted by s. 12 of Act No. 32 of 2001.]

(3) Where the hearing takes place before the Head of the Correctional Centre or the authorised official, the following penalties may be imposed severally or in the alternative:

- (a) A reprimand;
- (b) a loss of gratuity for a period not exceeding one month;
- (c) restriction of amenities for a period not exceeding seven days.

[Sub-s. (3) substituted by s. 12 of Act No. 32 of 2001.]

(4) At a hearing before a disciplinary official an inmate—

- (a) must be informed of the allegation in writing;
- (b) has the right to be present throughout the hearing, but the disciplinary official may order that the accused inmate be removed and that the hearing continue in his or her absence if, during the hearing, the accused inmate acts in such a way as to make the continuation of the hearing in his or her presence impracticable;
- (c) has the right to be heard, to cross-examine and to call witnesses;
- (d) has the right to be represented by a legal practitioner of his or her choice at his or her own expense, unless a request to be represented by a particular legal practitioner would cause an unreasonable delay in the finalisation of the hearing in which case the inmate may be instructed to obtain the services of another legal practitioner; and
- (e) has the right to be given reasons for the decision.

[Sub-s. (4) substituted by s. 12 of Act No. 32 of 2001 and amended by s. 18 (b) of Act No. 25 of 2008.]

(5) Where the hearing takes place before a disciplinary official, the following penalties may be imposed severally or in the alternative:

- (a) a reprimand;
- (b) a loss of gratuity for a period not exceeding two months;
- (c) restriction of amenities not exceeding 42 days;
- (d) in the case of serious or repeated infringements, segregation in order to undergo specific programmes aimed at correcting his or her behaviour, with a loss of gratuity and restriction of amenities as contemplated in paragraphs (b) and (c).

[Para. (d) substituted by s. 18 (c) of Act No. 25 of 2008.]

(6) The penalties referred to in subsections (3) and (5) may be suspended for such period and on such conditions as the presiding official deems fit.

(7) (a) At the request of the inmate proceedings resulting in any penalty other than a penalty contemplated in subsection 5 (d) must be referred for review to the National Commissioner.

(b) The National Commissioner may confirm or set aside the penalty and substitute an appropriate order for it.

[Sub-s. (7) substituted by s. 18 (d) of Act No. 25 of 2008.]

25.

[S. 25 repealed by s. 19 of Act No. 25 of 2008.]

Part C
Security

26. Safe custody.—(1) The right of every inmate to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of correctional officials and the safe custody of all inmates.

(2) In order to achieve the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, a correctional official may—

- (a) search the person of an inmate, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the correctional centre or of any person, or which could be used as evidence in a criminal trial or disciplinary proceedings;

[Para. (a) substituted by s. 20 of Act No. 25 of 2008.]

- (b) take steps to identify the inmate;

- (c)

[Para. (c) deleted by s. 13 (b) of Act No. 32 of 2001.]

- (d) apply mechanical means of restraint; and

- (e) use reasonable force.

[Sub-s. (2) amended by s. 13 (a) of Act No. 32 of 2001.]

(3) In order to achieve the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, the National Commissioner may classify and allocate accommodation to inmates.

[Sub-s. (3) added by s. 13 (c) of Act No. 32 of 2001.]

27. Searches.—(1) The person of an inmate may be searched by a manual search, or search by technical means, of the clothed body.

(2) Upon reasonable grounds, the person of an inmate may be searched in the following ways:

- (a) A search by visual inspection of the naked body;
- (b) search by the physical probing of any bodily orifice;
- (c) a search by taking a body tissue or body excretion sample for analysis;
- (d) a search by the use of an X-ray machine or technical device, by a qualified technician, if there are reasonable grounds for believing that an inmate has swallowed or excreted any object or substance that may be needed as an exhibit in a hearing or may pose a danger to himself or herself or to correctional officials or to the security of the correctional centre; and
- (e) by detaining an inmate for the recovery by the normal excretory process of an object that may pose a danger to that inmate, to any correctional official, to any other person or to the security of the correctional centre.

[Para. (e) substituted by s. 14 (a) of Act No. 32 of 2001.]

(3) A search of the person of an inmate contemplated in subsection (2) is subject to the following restrictions:

- (a) The search must be conducted in a manner which invades the privacy and undermines the dignity of the inmate as little as possible;
- (b) a correctional official of the same gender as the inmate must conduct the search and correctional officials of the other gender must not be present;

- (c) all searches must be conducted in private;
- (d) searches contemplated in subsections (1) and (2) must be authorised by the Head of the Correctional Centre but searches in terms of subsection (2) (b), (c), (d) and (e) must be executed or supervised by a registered nurse, correctional medical practitioner or medical practitioner, depending on the procedure necessary to effect the search.

[Sub-s. (3) amended by s. 14 (b) of Act No. 32 of 2001.]

(4) A correctional official or person conducting a search in terms of this section may seize anything found.

28. Identification.—(1) To ensure safe custody the following steps may be taken to identify an inmate:

- (a) the taking of finger and palm prints;
- (b) the taking of photographs;
- (c) the ascertaining of external physical characteristics;
- (d) the taking of measurements;
- (e) referral of the inmate to the correctional medical practitioner to ascertain the age of the inmate; and
- (f) the attachment of an electronic or other device to the body of the inmate in the manner prescribed by regulation.

[Para. (f) added by s. 15 (c) of Act No. 32 of 2001. (Editorial Note: In terms of s. 15 (c) of Act No. 32 of 2001, para. (d) must be added. It is suggested that para. (f) was in fact meant.)]

The inmate may request that, at his or her own expense, his or her private medical practitioner be present at an investigation referred to in paragraph (e).

[Sub-s. (1) amended by s. 22 (a) of Act No. 25 of 2008.]

(2) Identification data obtained in this way must be included in the inmate's personal file.

(3) If as a result of ascertaining the age of an inmate in terms of subsection (1) (e) or for any other reason it appears to the Head of the Correctional Centre that the court's determination of the age of the said inmate is incorrect, the Head of the Correctional Centre may remit the case to the court concerned for a reappraisal of the inmate's age.

[Sub-s. (3) substituted by s. 22 (b) of Act No. 25 of 2008.]

29. Security classification.—Security classification is determined by the extent to which the inmate presents a security risk and so as to determine the correctional centre or part of a correctional centre in which he or she is to be detained.

[S. 29 substituted by s. 23 of Act No. 25 of 2008.]

30. Segregation.—(1) Segregation of an inmate for a period of time, which may be for part of or the whole day and which may include detention in a single cell, other than normal accommodation in a single cell as contemplated in section 7 (2) (e), is permissible—

- (a) upon the written request of an inmate;
[Para. (a) substituted by s. 24 (b) of Act No. 25 of 2008.]
- (b) to give effect to the penalty of the restriction of the amenities imposed in terms of section 24 (3) (c), 5 (c) or 5 (d) to the extent necessary to achieve this objective;

[Para. (b) substituted by s. 24 (b) of Act No. 25 of 2008.]

- (c) if such detention is prescribed by the correctional medical practitioner on medical grounds;
- (d) when an inmate displays violence or is threatened with violence;
[Para. (d) substituted by s. 24 (b) of Act No. 25 of 2008.]
- (e) if an inmate has been recaptured after escape and there is a reasonable suspicion that such inmate will again escape or attempt to escape; and
[Para. (e) substituted by s. 24 (b) of Act No. 25 of 2008.]
- (f) if at the request of the South African Police Service, the Head of the Correctional Centre considers that it is in the interests of the administration of justice.

[Sub-s. (1) amended by s. 16 (a) of Act No. 32 of 2001 and by s. 24 (a) of Act No. 25 of 2008. Para. (f) substituted by s. 16 (b) of Act No. 32 of 2001.]

- (2) (a) An inmate who is segregated in terms of subsection (1) (b) to (f)—
 - (i) must be visited by a correctional official at least once every four hours and by the Head of the Correctional Centre at least once a day; and
 - (ii) must have his or her health assessed by a registered nurse, psychologist or a correctional medical practitioner at least once a day.
[Para. (a) amended by s. 24 (c) of Act No. 25 of 2008.]

(b) Segregation must be discontinued if the registered nurse, psychologist or correctional medical practitioner determines that it poses a threat to the health of the inmate.

(3) A request for segregation in terms of subsection (1) (a) may be withdrawn at any time.

(4) Segregation in terms of subsection (1) (c) to (f) may only be enforced for the minimum period that is necessary and this period may not, subject to the provisions of subsection (5), exceed seven days.

(5) If the Head of the Correctional Centre believes that it is necessary to extend the period of segregation in terms of subsection (1) (c) to (f) and if the correctional medical practitioner or psychologist certifies that such an extension would not be harmful to the health of the inmate, he or she may, with the permission of the National Commissioner, extend the period of segregation for a period not exceeding 30 days.

(6) All instances of segregation and extended segregation must be reported immediately by the Head of the Correctional Centre to the National Commissioner and to the Inspecting Judge.

(7) An inmate who is subjected to segregation may refer the matter to the Inspecting Judge who must decide thereon within 72 hours after receipt thereof.

[Sub-s. (7) substituted by s. 24 (d) of Act No. 25 of 2008.]

(8) Segregation must be for the minimum period, and place the minimum restrictions on the inmate, compatible with the purpose for which the inmate is being segregated.

(9) Except in so far as it may be necessary in terms of subsection (1) (b) segregation may never be ordered as a form of punishment or disciplinary measure.

31. Mechanical restraints.—(1) If it is necessary for the safety of an inmate or any other person, or the prevention of damage to any property, or if a reasonable

suspicion exists that an inmate may escape, or if requested by a court, a correctional official may restrain an inmate by mechanical restraints as prescribed by regulation.

[Sub-s. (1) substituted by s. 25 (a) of Act No. 25 of 2008.]

(2) An inmate may not be brought before court whilst in mechanical restraints, unless authorised by the court.

[Sub-s. (2) substituted by s. 25 (b) of Act No. 25 of 2008.]

(3) (a) When an inmate is in segregation and mechanical restraints are to be used, such use of mechanical restraints must be authorised by the Head of the Correctional Centre and the period may not, subject to the provisions of paragraphs (b) and (c), exceed seven days.

[Para. (a) substituted by s. 25 (c) of Act No. 25 of 2008.]

(b) Mechanical restraints may only be used for the minimum period necessary and this period may not, subject to the provisions of paragraph (c), exceed seven days.

(c) The National Commissioner may extend such period for a maximum period not exceeding 30 days after consideration of a report by a correctional medical practitioner or psychologist.

(d) All cases of the use of mechanical restraints must be reported immediately by the Head of the Correctional Centre to the National Commissioner and to the Inspecting Judge.

[Para. (d) added by s. 25 (d) of Act No. 25 of 2008.]

(4)

[Sub-s. (4) deleted by s. 25 (e) of Act No. 25 of 2008.]

(5) An inmate who is subjected to such restraints may appeal against the decision to the Inspecting Judge who must decide thereon within 72 hours after receipt thereof.

[Sub-s. (5) substituted by s. 25 (f) of Act No. 25 of 2008.]

(6) Mechanical restraints may never be ordered as a form of punishment or disciplinary measure.

(7) Mechanical restraints in addition to handcuffs or leg-irons may only be used on inmates when outside their cells.

[Sub-s. (7) added by s. 17 of Act No. 32 of 2001 and substituted by s. 25 (f) of Act No. 25 of 2008.]

32. Use of force.—(1) (a) Every correctional official is authorised to use all lawful means to detain in safe custody all inmates and, subject to the restrictions of this Act or any other law, may use minimum force to achieve this objective where no other means are available.

(b) A minimum degree of force must be used and the force must be proportionate to the objective.

(c) A correctional official may not use force against an inmate except when it is necessary for—

- (i) self-defence;
- (ii) the defence of any other person;
- (iii) preventing an inmate from escaping; or
- (iv) the protection of property.

[Sub-s. (1) substituted by s. 26 (a) of Act No. 25 of 2008. Para. (c) added by s. 18 (a) of Act No. 32 of 2001.]

(2) Force may be used only when authorised by the Head of the Correctional Centre, unless a correctional official reasonably believes that the Head of the Correctional Centre would authorise the use of force and that the delay in obtaining such authorisation would defeat the objective.

(3) If, after a correctional official has tried to obtain authorization, force is used without prior permission, the correctional official must report the action taken to the Head of the Correctional Centre as soon as reasonably possible.

(4) Any such permission or instruction to use force may include the use of non-lethal incapacitating devices or firearms, subject to the restrictions set out in sections 33 and 34.

(5) If force was used, the inmate concerned must undergo an immediate medical examination and receive the treatment prescribed by the correctional medical practitioner.

[Sub-s. (5) substituted by s. 18 (b) of Act No. 32 of 2001 and s. 26 (b) of Act No. 25 of 2008.]

(6) All instances of use of force in terms of subsections (2) and (3) must be reported to the Inspecting Judge, immediately.

[Sub-s. (6) added by s. 26 (c) of Act No. 25 of 2008.]

33. Non-lethal incapacitating devices.—(1) Non-lethal incapacitating devices may only be issued to a correctional official on the authority of the Head of the Correctional Centre.

[Sub-s. (1) substituted by s. 19 (a) of Act No. 32 of 2001.]

(2) Such devices may only be used by a correctional official specifically trained in their use.

(3) Such devices may be used in the manner prescribed by regulation and then only—

(a) if an inmate fails to lay down a weapon or some other dangerous instrument in spite of being ordered to do so;

[Para. (a) substituted by s. 27 (a) of Act No. 25 of 2008.]

(b) if the security of the correctional centre or safety of inmates or others is threatened by one or more inmates; or

[Para. (b) substituted by s. 27 (a) of Act No. 25 of 2008.]

(c) for the purpose of preventing an escape.

(4) Whenever such devices are used, their use must be reported in writing and as prescribed by regulation.

(5) Tear-gas grenades and cartridges fired by firearms or launch-tubes may not be fired or launched directly at a person or into a crowd.

[Sub-s. (5) added by s. 19 (b) of Act No. 32 of 2001.]

(6) Whenever a correctional official decides to use tear-gas he or she must be convinced that its use in the specific situation meets the requirements of minimum and proportionate force as required by section 32 (1) (b).

[Sub-s. (6) added by s. 19 (b) of Act No. 32 of 2001.]

(7) If an inmate has been affected by tear-gas he or she must receive medical treatment as soon as the situation allows.

[Sub-s. (7) added by s. 19 (b) of Act No. 32 of 2001 and substituted by s. 27 (b) of Act No. 25 of 2008.]

34. Firearms.—(1) A firearm may only be issued to a correctional official on the authority of the Head of the Correctional Centre or the Head of Community Corrections.

(2) A firearm may only be used by a correctional official specifically trained in its use.

(3) Firearms may only be used as a last resort and then only—

(a) in self-defence;

(b) in defence of any other person;

(c) to prevent an inmate from escaping; or

[Para. (c) substituted by s. 28 of Act No. 25 of 2008.]

(d) when the security of the correctional centre or the safety of inmates or other persons is threatened.

[Para. (d) substituted by s. 28 of Act No. 25 of 2008.]

(4) Before a firearm is fired, the following procedure must be adhered to, if circumstances permit:

(a) A verbal warning must be given;

(b) if the warning is of no effect, a warning shot must be fired;

(c) if the warnings are of no effect, the line of fire should be directed in such a manner that the probable result will not be a fatal injury.

(5) Weapons equipped for firing rubber-type ammunition may only be issued to trained correctional officials and then only for training purposes or during emergency situations.

(6) (a) Rubber-type ammunition may as a general rule only be fired at a distance of more than 30 metres from a person.

(b) If such ammunition is fired at less than 30 metres from a person, the line of fire must be directed at the lower body of the person.

(c) Rubber-type ammunition may not be fired within a building.

(7) Whenever a firearm is used, its use must be reported in writing and as prescribed by regulation.

[S. 34 substituted by s. 20 of Act No. 32 of 2001.]

35. Other weapons.—(1) The use of weapons other than non-lethal incapacitating devices or firearms may be authorised by the National Commissioner as prescribed by regulation.

(2) Such regulations must prescribe the training, manner of use, control and reporting procedures.

CHAPTER IV SENTENCED OFFENDERS

36. Objective of implementation of sentence of incarceration.—With due regard to the fact that the deprivation of liberty serves the purposes of punishment, the implementation of a sentence of incarceration has the objective of enabling the sentenced offender to lead a socially responsible and crime-free life in the future.

37. General principles.—(1) In addition to the obligations which apply to all inmates every sentenced offender must—

- (a) participate in the assessment process and the design and implementation of any development plan or programme aimed at achieving the said objective; and
- (b) perform any labour which is related to any development programme or which generally is designed to foster habits of industry, unless the correctional medical practitioner or psychologist certifies in writing that he or she is physically or mentally unfit to perform such labour.

[Sub-s. (1) amended by s. 29 (a) of Act No. 25 of 2008.]

(1A) In order to furnish sentenced offenders the opportunity to comply with the obligations contemplated in subsection (1), the Department must, as far as it is possible, apply a management regime which consists of—

- (a) good communication between correctional officials and inmates, which is understood by everyone;
- (b) team work;
- (c) direct, interactive supervision of inmates;
- (d) assessment of sentenced offenders;
- (e) needs-driven programmes for sentenced offenders in a structured day and correctional sentence plan;
- (f) the provision of multi-skilled staff in an enabling and resourced environment;
- (g) a restorative, developmental and human rights approach to sentenced offenders; and
- (h) delegated authority with clear lines of accountability.

[Sub-s. (1A) inserted by s. 29 (b) of Act No. 25 of 2008.]

(2) In addition to providing a regime which meets the minimum requirements of this Act, the Department must seek to provide amenities which will create an environment in which sentenced offenders will be able to live with dignity and develop the ability to lead a socially responsible and crime-free life.

(3) All such amenities must be prescribed by regulation and as far as possible be available to all sentenced offenders unless, for economic or other practical reasons, such amenities can be introduced in some correctional centres only, in which case, their partial introduction should be on a non-discriminatory basis.

(4) In addition to the general purpose stated in section 22, the disciplinary system for sentenced offenders shall have the particular aim of promoting self-respect and responsibility on the part of such offenders.

[Sub-s. (4) substituted by s. 29 (c) of Act No. 25 of 2008.]

38. Assessment.—(1) As soon as possible after admission as a sentenced offender, such offender must be assessed to determine his or her—

- (a) security classification for purposes of safe custody;
- (b) health needs;
- (c) educational needs;
- (d) social and psychological needs;
- (e) religious needs;
- (f) specific development programme needs;
- (g) work allocation;

- (h) allocation to a specific correctional centre;
[Para. (h) substituted by s. 6 (a) of Act No. 5 of 2011.]
- (i) needs regarding reintegration into the community;
[Para. (i) substituted by s. 6 (b) of Act No. 5 of 2011.]
- (j) restorative justice requirements; and
[Para. (j) added by s. 6 (c) of Act No. 5 of 2011.]
- (k) vulnerability to sexual violence and exploitation.
[Sub-s. (1) amended by s. 30 (a) of Act No. 25 of 2008. Para. (k) added by s. 6 (c) of Act No. 5 of 2011.]

(1A) (a) As soon as possible after the assessment contemplated in subsection (1) the Case Management Committee must compile a correctional sentence plan in relation to the future of persons sentenced to incarceration of more than 24 months in the correctional centre.

(b) The correctional sentence plan must address each of the matters and needs referred to in subsection (1) and must, in particular—

- (i) contain the proposed intervention aimed at addressing the risks and needs of the sentenced offender, as identified during an in-depth risk assessment, to correct the offending behaviour;
- (ii) spell out what services and programmes are required to target offending behaviour and to help the sentenced offender develop skills to handle the socio-economic conditions that led to criminality;
- (iii) spell out services and programmes needed to enhance the sentenced offender's social functioning; and
- (iv) set time frames and specify responsibilities to ensure that the intended services and programmes are offered to the sentenced offender.

[Sub-s. (1A) inserted by s. 30 (b) of Act No. 25 of 2008.]

(2) In the case of a sentence of incarceration exceeding 24 months, the manner in which the sentence should be served must be planned in the light of the assessment and correctional sentence plan referred to in subsections (1) and (1A) and any comments by the sentencing court.

[Sub-s. (2) substituted by s. 30 (c) of Act No. 25 of 2008.]

39. Commencement, computation and termination of sentences.—(1) Subject to the provisions of subsection (2) a sentence of incarceration takes effect from the day on which that sentence is passed, unless it is suspended under the provisions of any law or unless the sentenced person is released on bail pending a decision of a higher court, in which case the sentence takes effect from the day on which he or she submits to or is taken into custody.

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

- (i) any determinate sentence of incarceration to be served by any person runs concurrently with a life sentence or with sentence of incarceration to be served by such person in consequence of being declared a dangerous criminal;

- (ii) one or more life sentences and one or more sentences to be served in consequence of a person being declared a dangerous criminal also run concurrently;
- (iii) no placement or release of a dangerous criminal may take place other than in terms of section 286B of the Criminal Procedure Act; and
- (iv) any determinate sentence of incarceration to be served by any person runs concurrently with a sentence of imprisonment to be served by such person in consequence of a person being declared a habitual criminal: Provided that where the determinate sentence is longer than 15 years or where such sentence is imposed after a person is declared a habitual criminal, the balance of such determinate sentence must be served after the term of 15 years has been completed.

[Para. (a) substituted by s. 7 (a) of Act No. 5 of 2011.]

(b) In the case of the imposition of more than one period of incarceration, the non-parole period or periods, fixed by the court must be served consecutively before a sentenced offender becomes eligible for parole.

[Para. (b) substituted by s. 31 (a) of Act No. 25 of 2008.]

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

[Sub-s. (3) substituted by s. 31 (b) of Act No. 25 of 2008 and by s. 7 (b) of Act No. 5 of 2011.]

(4) Any person whose sentence expires on a Sunday or public holiday must be discharged on the day preceding such Sunday or public holiday.

(5) (a) If a person receives more than one sentence of correctional supervision referred to in section 276 (1) (h) of the Criminal Procedure Act, or receives additional sentences of correctional supervision while serving a sentence of correctional supervision referred to in section 276 (1) (h) of the Criminal Procedure Act, each such sentence must be served the one after the expiration, setting aside or remission of the other in such order as the National Commissioner may determine, unless the court specifically directs otherwise, or unless the court directs that such sentences shall run concurrently.

(b) If a person sentenced to correctional supervision is sentenced to incarceration for an offence committed before the commencement of the correctional supervision, the correctional supervision must be postponed until placement under correctional supervision has again been approved or until the expiration, setting aside or remission of the sentence of incarceration.

(c) If a person sentenced to correctional supervision is placed on parole, the correctional supervision must be served before the parole may commence.

(d) If a person sentenced to correctional supervision or a person under community corrections is sentenced to periodical incarceration, the sentence of periodical incarceration and the correctional supervision or parole, as the case may be, must be served simultaneously, unless the court directs otherwise.

[Para. (d) substituted by s. 31 (c) of Act No. 25 of 2008.]

(e) If a person sentenced to correctional supervision or a person under community corrections is served with a warrant of detention for contempt of court, the correctional supervision or parole, as the case may be, must be postponed for the period specified in the warrant of detention.

[Para. (e) substituted by s. 31 (c) of Act No. 25 of 2008.]

(f) If a person under community corrections is sentenced to incarceration for an offence committed before the commencement of the parole, the parole must be regarded as cancelled and the matter be referred to the Correctional Supervision and Parole Board concerned for consideration.

[Para. (f) substituted by s. 31 (c) of Act No. 25 of 2008.]

(6) (a) After the National Commissioner is satisfied that a sentenced offender has been released from a correctional centre erroneously, he or she may issue a warrant for the arrest of such a sentenced offender to be re-admitted to a correctional centre, to serve the rest of his or her sentence.

[Para. (a) substituted by s. 31 (d) of Act No. 25 of 2008.]

(b) A warrant issued in terms of subsection (6) (a), may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act.

40. Labour of sentenced offenders.—(1) (a) Sufficient work must as far as is practicable be provided to keep sentenced offenders active for a normal working day and a sentenced offender may be compelled to do such work.

(b) Such work must as far as is practicable be aimed at providing such offenders with skills in order to be gainfully employed in society on release.

(2) A sentenced offender may not work or conduct any business on his or her own account.

(3) (a) A sentenced offender may elect the type of work he or she prefers to perform, if such choice is practicable and in accordance with an appropriate vocational programme.

(b) A child who is a sentenced offender may only do work for the purposes of training aimed at obtaining skills for his or her development.

(c) A child who is a sentenced offender may not be subjected to work if the work that is to be performed is inappropriate for the age of the child or if the work places the child's educational, physical, mental, moral or social well-being at risk.

(4) (a) Subject to paragraph (b), the amount of the gratuity that sentenced offenders receive for their labour, the administration of the gratuity and the sentenced offenders' conditions of work must be prescribed by regulation.

(b) The amount of the gratuity contemplated in paragraph (a) must be determined by the National Commissioner with the concurrence of the Minister of Finance.

(5) A sentenced offender may never be instructed or compelled to work as a form of punishment or disciplinary measure.

(6) Work performed by a sentenced offender must be in accordance with the principles contained in section 37 (1) (b) and the performance thereof will not constitute an employment relationship with the Department.

[S. 40 substituted by s. 32 of Act No. 25 of 2008.]

41. Treatment, development and support services.—(1) The Department must provide or give access to as full a range of programmes and activities, including needs-based programmes, as is practicable to meet the educational and training needs of sentenced offenders.

(2) (a) Sentenced offenders who are illiterate or children must be compelled to take part in the educational programmes offered in terms of subsection (1).

(b) Such programmes may be prescribed by regulation.

(3) The Department must provide social and psychological services in order to develop and support sentenced offenders by promoting their social functioning and mental health.

(4) The Department must provide as far as practicable other development and support programmes which meet specific needs of sentenced offenders.

(5) Sentenced offenders have the right to take part in the programmes and use the services offered in terms of subsections (1), (3) and (4).

(6) Sentenced offenders may be compelled to participate in programmes and to use services offered in terms of subsections (1), (3) and (4) where in the opinion of the National Commissioner their participation is necessary, having regard to the nature of their previous criminal conduct and the risk they pose to the community.

(7) Programmes must be responsive to special needs of women and they must ensure that women are not disadvantaged.

[S. 41 substituted by s. 33 of Act No. 25 of 2008.]

42. Case Management Committee.—(1) At each correctional centre there must be one or more Case Management Committees composed of correctional officials as prescribed by regulation.

(2) The Case Management Committee must—

- (a) ensure that each sentenced offender has been assessed, and that for sentenced offenders serving more than 24 months there is a plan specified in section 38 (1A);
- (b) interview, at regular intervals, each sentenced offender sentenced to more than 24 months, review the plan for such offenders and the progress made and, if necessary, amend such plan;
- (c) make preliminary arrangements, in consultation with the Head of Community Corrections for possible placement of a sentenced offender under community corrections;
- (d) submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding—
 - (i) the offence or offences for which the sentenced offender is serving a term of incarceration together with the judgment on the merits and any remarks made by the court in question at the time of the imposition of sentence if made available to the Department;
 - (ii) the previous criminal record of such offender;
 - (iii) the conduct, disciplinary record, adaptation, training, aptitude, industry, physical and mental state of such offender;
 - (iv) the likelihood of a relapse into crime, the risk posed to the community and the manner in which this risk can be reduced;
 - (v) the assessment results and the progress with regard to the correctional sentence plan contemplated in section 38;
 - (vi) the possible placement of an offender under correctional supervision in terms of a sentence provided for in section 276 (1) (i) or 287 (4) (a) of the Criminal Procedure Act, or in terms of the conversion of such an offender's sentence into correctional supervision under section 276A (3) (e) (ii) or 287 (4) (b) of the said Act, and the conditions for such placement:

- (vii) the possible placement of such sentenced offender on day parole, parole or medical parole, and the conditions for such placement;
 - (viii) a certified copy of the offender's identity document and, in the case of a foreign national, a report from the Department of Home Affairs on the residential status of such offender;
 - (ix) the possible placement under correctional supervision or release of an offender who has been declared a dangerous criminal, in terms of section 286B (4) (b) of the Criminal Procedure Act; and
 - (x) such other matters as the Correctional Supervision and Parole Board may request; and
- [Para. (d) substituted by s. 8 of Act No. 5 of 2011.]

- (e) submit a report as contemplated in paragraph (d) to the National Commissioner in respect of any sentenced offender sentenced to incarceration of 24 months or less.

(3) A sentenced offender must be informed of the contents of the report submitted by the Case Management Committee to the Correctional Supervision and Parole Board or the National Commissioner and be afforded the opportunity to submit written representations to the Correctional Supervision and Parole Board or National Commissioner, as the case may be.

[S. 42 amended by s. 22 of Act No. 32 of 2001 and substituted by s. 34 of Act No. 25 of 2008.]

43. Location and transfer of sentenced offenders.—(1) A sentenced offender must be housed at the correctional centre closest to the place where he or she is to reside after release, with due regard to the availability of accommodation and facilities to meet his or her security requirements and with reference to the availability of programmes.

[Sub-s. (1) substituted by s. 35 of Act No. 25 of 2008.]

- (2) The transfer of a sentenced offender is subject to the same consideration.

[Sub-s. (2) substituted by s. 35 of Act No. 25 of 2008.]

(3) A sentenced offender must be examined by the registered nurse or correctional medical practitioner before his or her transfer. Where such an offender is being treated by a medical practitioner, he or she must not be transferred until such an offender has been discharged from the treatment or the transfer has been approved by the correctional medical practitioner after consultation with the Head of the Correctional Centre.

[Sub-s. (3) substituted by s. 35 of Act No. 25 of 2008.]

(4) The Commissioner may, in consultation with a provincial head of education, or a provincial head of social development, as the case may be, transfer a sentenced child to a child and youth care centre providing a programme contemplated in section 191 (2) (j) of the Children's Act, 2005 (Act No. 32 of 2005) and from the date of such transfer the provisions of section 76 of the Child Justice Act, 2008, will apply.

[Sub-s. (4) substituted by s. 35 of Act No. 25 of 2008 and by s. 99 (1) of Act No. 75 of 2008.]

(Editorial Note: Wording published as per original Government Gazette. Please note that Act No. 32 of 2005 is in fact the Revenue Laws Second Amendment Act, 2005. It is suggested that section 191 (2) (j) of Act No. 38 of 2005 is in fact meant.)

44. Temporary leave.—(1) The National Commissioner may grant permission in writing on such conditions and for such periods as he or she may specify, for a sentenced offender to leave the correctional centre temporarily for the purpose of—

- (a) compassionate leave;
- (b) treatment, development or support programmes;
- (c) preparation for release; or
- (d) any other reason related to the successful reintegration of the sentenced offender into the community.

[Sub-s. (1) amended by s. 36 (a) of Act No. 25 of 2008.]

(2) (a) A sentenced offender who is granted permission to leave correctional centre remains a sentenced offender even while temporarily outside correctional centre and may be placed under escort or under supervision.

(b) If the sentenced offender is placed under supervision the provisions of section 58 relating to supervision will apply, with the necessary changes.

(3) (a) Any permission in terms of subsection (1) may be withdrawn at any time by the National Commissioner.

(b) In that event the National Commissioner must inform the sentenced offender concerned and if such sentenced offender is outside correctional centre direct him or her to return to correctional centre by a specified time.

(4) A sentenced offender who fails to return to correctional centre at the specified time, is guilty of an offence and liable on conviction to the penalty prescribed in section 117.

[S. 44 amended by s. 36 (b) of Act No. 25 of 2008.]

45. Placement and release.—(1) A sentenced offender must be prepared for placement, release and reintegration into society by participating in a pre-release programme.

(2) Where a sentenced offender is to be placed under correctional supervision or to be released on parole there must be compliance with section 55 (3).

(3) At release, sentenced offenders must be provided with material and financial support as prescribed by regulation.

(4) If the correctional medical practitioner considers it necessary to establish the health status of a sentenced offender at his or her release, such an offender must undergo a health status examination which may include testing for contagious and communicable diseases as defined in the Health Act, 1977 (Act No. 63 of 1977).

[S. 45 substituted by s. 37 of Act No. 25 of 2008. Sub-s. (4) added by s. 23 of Act No. 32 of 2001.]

CHAPTER V

MANAGEMENT, SAFE CUSTODY AND WELL-BEING OF REMAND DETAINEES

[Chapter V substituted by s. 9 of Act No. 5 of 2011.]

46. Management, safe custody and well-being of remand detainees.—

(1) Remand detainees may be subjected only to those restrictions necessary for the maintenance of security and good order in the remand detention facility and must, where practicable, be allowed all the amenities to which they could have access outside the remand detention facility.

(2) The amenities available to remand detainees may be restricted for disciplinary purposes, and may be prescribed by regulation.

[S. 46 substituted by s. 9 of Act No. 5 of 2011.]

47. Food and drink.—Subject to restrictions which may be prescribed by regulation, remand detainees may be allowed to have food and drink sent or brought to them in a remand detention facility.

[S. 47 substituted by s. 38 of Act No. 25 of 2008 and by s. 9 of Act No. 5 of 2011.]

48. Food and drink.—Subject to restrictions which may be prescribed by regulation, unsentenced offenders may have food and drink sent to them in correctional centre.

(Editorial Note: S. 48 to be substituted by s. 9 of Act No. 5 of 2011 with effect from a date determined by the President by proclamation in the *Gazette* – date not determined.)

49. Safekeeping of information and records.—Information and records, as prescribed by regulation, must be kept at the relevant detention facility for the periods as provided for in the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).

[S. 49 substituted by s. 24 of Act No. 32 of 2001 (English only) and by s. 9 of Act No. 5 of 2011.]

49A. Pregnant women.—(1) Every remand detainee who on admission claims to be pregnant, must immediately be referred to a registered medical practitioner for a full medical examination in order to confirm such pregnancy.

(2) The National Commissioner must, within the Department's available resources, ensure that a unit is available for the accommodation of pregnant remand detainees.

(3) Every pregnant remand detainee must be provided with an adequate diet to promote good health, as prescribed by regulation.

[S. 49A inserted by s. 9 of Act No. 5 of 2011.]

49B. Disabled remand detainees.—(1) If the National Commissioner considers it necessary, having regard to remand detainees' disability, the National Commissioner may detain disabled remand detainees separately in single or communal cells, depending on the availability of accommodation specifically designed for persons with disabilities.

(2) The Department must provide, within its available resources, additional health care services, based on the principles of primary health care, in order to allow the remand detainee to lead a healthy life.

(3) The Department must provide, within its available resources, additional psychological services, if recommended by a medical practitioner.

[S. 49B inserted by s. 9 of Act No. 5 of 2011.]

49C. Aged remand detainees.—(1) The National Commissioner may detain remand detainees over the age of 65 years in single or communal cells, depending on the availability of accommodation.

(2) A registered medical practitioner may order a variation in the prescribed diet for an aged remand detainee and the intervals at which the food is served, when such a variation is required for medical reasons and is within the available resources of the Department.

[S. 49C inserted by s. 9 of Act No. 5 of 2011.]

49D. Mentally ill remand detainees.—(1) The National Commissioner may detain a person suspected to be mentally ill, in terms of section 77 (1) of the Criminal Procedure Act or a person showing signs of mental health care problems, in a single cell or correctional health facility for purposes of observation by a medical practitioner.

(2) The Department must provide, within its available resources, adequate health care services for the prescribed care and treatment of the mentally ill remand detainee.

(3) The Department must, within its available resources, provide social and psychological services in order to support mentally ill remand detainees and promote their mental health.

[S. 49D inserted by s. 9 of Act No. 5 of 2011.]

49E.

(Editorial Note: S. 49E to be inserted by s.9 of Act No. 5 of 2011 with effect from a date determined by the President by proclamation in the *Gazette* – date not determined.)

49F. Release under supervision of South African Police Service.—(1) No remand detainee may be surrendered to the South African Police Service for the purpose of further investigation, without authorisation by the National Commissioner.

(2) The National Commissioner may authorise the surrender of a remand detainee to the South African Police Service as contemplated in subsection (1) for a period not exceeding seven days.

[S. 49F inserted by s. 9 of Act No. 5 of 2011.]

49G.

(Editorial Note: S. 49G to be inserted by s. 9 of Act No. 5 of 2011 with effect from a date determined by the President by proclamation in the *Gazette* – date not determined.)

CHAPTER VI
COMMUNITY CORRECTIONS

50. Objectives of community corrections.—(1) (a) The objectives of community corrections are—

- (i) to afford sentenced offenders an opportunity to serve their sentences in a non-custodial manner;
- (ii) to enable persons subject to community corrections to lead a socially responsible and crime-free life during the period of their sentence and in future;
- (iii) to enable persons subject to community corrections to be rehabilitated in a manner that best keeps them as an integral part of society; and
- (iv) to enable persons subject to community corrections to be fully integrated into society when they have completed their sentences.

(b) These objectives do not apply to restrictions imposed in terms of section 62 (f) or section 24 (4) (d) or 26 of the Child Justice Act, 2008.

(Editorial Note: Prior to amendment by Act, No. 75 of 2008, section 62 (f) pertained to the Criminal Procedure Act. We have contacted the Department of Social Development with regard to the clarity of paragraph (b) and await a response.)

[Sub-s. (1) substituted by s. 39 of Act No. 25 of 2008 and amended by s. 99 (1) of Act No. 75 of 2008.]

(2) The immediate aim of the implementation of community corrections is to ensure that persons subject to community corrections abide by the conditions imposed upon them in order to protect the community from offences which such persons may commit.

(Date of commencement of s. 50: 1 October, 2004.)

51. Persons subject to community corrections.—(1) Persons subject to community corrections are—

- (a) those placed under correctional supervision in terms of sections 6 (1) (c), 276 (1) (h), 276 (1) (i), 276A (3) (a) (ii), 276A (3) (e) (ii), 286B (4) (b) (ii), 286B (5) (b) (iii), 287 (4) (a), 287 (4) (b), 297 (1) (a) (i) (ccA), 297 (1) (b) or 297 (4) of the Criminal Procedure Act;
- (b) while out of the correctional centre, sentenced offenders who have been granted temporary leave in terms of section 44;
[Para. (b) substituted by s. 40 of Act No. 25 of 2008.]
- (c) while out of correctional centre, those placed on day parole in terms of section 54;
- (d) those placed on parole in terms of section 73; and
- (e) those placed under the supervision of a correctional official in terms of section 62 (f) of the Criminal Procedure Act or section 24 (4) (d), 75 or 76 of the Child Justice Act, 2008.

[Para. (e) substituted by s. 99 (1) of Act No. 75 of 2008.]

(2) No order imposing community corrections may be made unless the person who is to be subjected to community corrections agrees that it should be made according to the stipulated conditions and undertakes to co-operate in meeting them.

(3) Before the consideration of the placement of a child, the parent or guardian, where practicable, must be informed of the proposed placement.

(Date of commencement of s. 51: 1 October, 2004.)

52. Conditions relating to community corrections.—(1) When community corrections are ordered, a court, the Correctional Supervision and Parole Board, the National Commissioner or other body which has the statutory authority to do so, may, subject to the limitations contemplated in subsection (2) and the qualifications of this Chapter, stipulate that the person concerned—

- (a) is placed under house detention;
- (b) does community service in order to facilitate restoration of the relationship between the sentenced offenders and the community;
[Para. (b) substituted by s. 41 (b) of Act No. 25 of 2008.]
- (c) seeks employment;
- (d) where possible takes up and remains in employment;
[Para. (d) substituted by s. 41 (c) of Act No. 25 of 2008.]
- (e) pays compensation or damages to victims;
- (f) takes part in treatment, development and support programmes;

- (g) participates in mediation between victim and offender or in family group conferencing;
- (h) contributes financially towards the cost of the community corrections to which he or she has been subjected;
- (i) is restricted to one or more magisterial districts;
- (j) lives at a fixed address;
- (k) refrains from using alcohol or illegal drugs;
[Para. (k) substituted by s. 41 (d) of Act No. 25 of 2008.]
- (l) refrains from committing a criminal offence;
- (m) refrains from visiting a particular place;
- (n) refrains from making contact with a particular person or persons;
- (o) refrains from threatening a particular person or persons by word or action;
- (p) is subject to monitoring;
- (q) in the case of a child, is subject to the additional conditions as contained in section 69; or
[Para. (q) substituted by s. 41 (e) of Act No. 25 of 2008.]
- (r) is subject to such other conditions as may be appropriate in the circumstances.

[Sub-s. (1) amended by s. 41 (a) of Act No. 25 of 2008. Para. (r) added by s. 41 (f) of Act No. 25 of 2008.]

(2) These conditions may be stipulated concurrently but—

- (a) parole granted in terms of section 73 may not include the condition of compensation referred to in subsection (1) (e) unless compensation was part of the original sentence of the court;
- (b) supervision by a correctional official imposed in terms of section 62 (f) or section 24 (4) (d) or 26 of the Child Justice Act, 2008, may not include the conditions referred to in subsection (1) (b) to (h);
[Para. (b) amended by s. 99 (1) of Act No. 75 of 2008.]

(Editorial Note: Prior to amendment by Act, No. 75 of 2008, section 62 (f) pertained to the Criminal Procedure Act. We have contacted the Department of Social Development with regard to the clarity of paragraph (b) and await a response.)

- (c) day parole granted in terms of section 54 may not include the conditions referred to in subsection (1) (a) or the conditions of compensation referred to in subsection (1) (e) unless payment of compensation was part of the original sentence of the court; and
- (d) temporary leave granted in terms of section 44 may not include the conditions referred to in subsection (1) (b) to (g).

(Date of commencement of s. 52: 1 October, 2004.)

53. Serving of community corrections.—Community corrections are served in terms of section 39 of this Act.

(Date of commencement of s. 53: 1 October, 2004.)

54. Day parole.—(1) A person granted day parole remains a sentenced offender while in correctional centre and is otherwise a person subject to community corrections but—

- (a) such person may wear his or her own clothing whilst he or she is on day parole; and
- (b) if he or she can afford it, must pay for board and lodging and medical services.

(2) The Minister, National Commissioner, Correctional Supervision and Parole Board, court or other body must decide on the duration of placement on day parole and must inform the Head of the Correctional Centre who must inform the sentenced offender concerned of that determination.

[Sub-s. (2) substituted by s. 10 of Act No. 5 of 2011.]

(3) A person on day parole who fails to report at correctional centre is guilty of an offence and liable on conviction of the penalty prescribed in section 117.

(Date of commencement of s. 54: 1 October, 2004.)

55. Commencement.—(1) Community corrections may not commence without a warrant or appropriate order being lodged at the community corrections office.

(2) At every community corrections office the following must be recorded in a register:

- (a) Information about the identity of the person subject to community corrections;
- (b) the authority for the imposition of community corrections;
- (c) the conditions of the community corrections order; and
- (d) the date and hour of commencement and expiry of the sentence or period of community corrections.

(3) (a) At the commencement of community corrections the person concerned must be informed in writing of—

- (i) the conditions which will be imposed on him or her in a form and language which will enable him or her to understand what he or she is expected to do or to refrain from doing;
- (ii) the channels of communication for complaints and requests.

(b) If the person is illiterate, a correctional official must explain this written information through an interpreter if necessary.

(c) The person concerned must confirm that the information has been understood.

(4) At the commencement of the community corrections, the person concerned—

- (a) must allow his or her identity and other particulars to be established in the manner and to the same extent as required in section 28 in respect of an inmate; and

[Para. (a) substituted by s. 42 of Act No. 25 of 2008.]

- (b) may be required to submit to a medical examination to determine physical and mental fitness with reference to the conditions imposed.

(Date of commencement of s. 55: 1 October, 2004.)

56. Medical examination.—(1) If at any time whilst a person is subject to community corrections a correctional official has reason to believe that a medical examination is required in order to determine whether the conditions set for the person are appropriate in the light of his or her health, the correctional official may request a correctional medical practitioner to conduct such an examination.

(2) A person subject to community corrections must submit to such an examination.

(Date of commencement of s. 56: 1 October, 2004.)

57. Supervision.—(1) All persons subject to community corrections must be supervised in the community by correctional officials.

(2) Such supervision must not invade the privacy of the person concerned more than is necessary to ensure compliance with the conditions of the community corrections imposed.

(3) If during such supervision it is reasonably necessary to ensure the safety of a correctional official or of any other person, a correctional official may search a person subject to community corrections and confiscate any weapon found.

(4) A person subject to community corrections must facilitate the supervision process and in particular must not threaten, abuse, obstruct or deliberately avoid a correctional official.

(5) A person subject to community corrections may not be under the influence of alcohol or other drug to an extent that impairs the process of supervision.

(6) A person subject to community corrections may be required to attend and participate in meetings with the correctional official or officials responsible for supervising his or her behaviour or with a Supervision Committee.

(Date of commencement of s. 57: 1 October, 2004.)

58. Supervision Committee.—(1) (a) There must be a Supervision Committee at each community corrections office composed, as prescribed by regulation, of correctional officials involved in the supervision of persons subject to community corrections and, if practicable, of a person or persons from the community who are experts in behavioural sciences.

(b) A Supervision Committee must be managed by correctional officials in the manner prescribed by regulation.

[Sub-s. (1) amended by s. 25 of Act No. 32 of 2001. Para. (b) added by s. 25 of Act No. 32 of 2001.]

(2) The Supervision Committee must determine the level of supervision for each person subject to community corrections and must review its determination at regular intervals.

(3) The Supervision Committee must review at regular intervals the extent to which the objectives of community corrections are being achieved in respect of each person subject to community corrections.

(4) An additional review may be held at the request of the person subject to community corrections or of the correctional official directly responsible for the supervision of such person.

(5) A person subject to community corrections must be informed of a meeting where his or her case will be discussed, the issues which will be raised and that he or she may make written submissions to be considered by the Supervision Committee.

(6) After having reviewed the extent to which the objectives of community corrections are being achieved in respect of a person subject to community corrections, the Supervision Committee must—

(a) decide whether the means and level of supervision applied to such person should be modified; and

- (b) submit a report and advise the Correctional Supervision and Parole Board or the National Commissioner, as the case may be, on the desirability of—
 - (i) applying for a change in the conditions of the community corrections imposed on such person; or
 - (ii) applying for or issuing a warrant for the arrest of such a person.

[Para. (b) substituted by s. 43 of Act No. 25 of 2008.]

(Date of commencement of s. 58: 1 October, 2004.)

59. House detention.—Where a condition of house detention is set in terms of section 52 (1) (a), it must stipulate the hours to which the person is restricted daily to his or her dwelling and the overall duration of the limitation.

(Date of commencement of s. 59: 1 October, 2004.)

60. Community service.—(1) Where a condition of community service is set as part of community corrections, it must stipulate the number of hours which the person is required to serve, which shall not be less than 16 hours per month, unless the court otherwise directed.

(2) (a) The court, Correctional Supervision and Parole Board or other body which has the authority to impose community service may specify where such community service is to be done.

(b) Such an order may not be changed without the matter being referred back to the court, Board or other body which set the condition unless it provides that the order may be changed by a Supervision Committee.

(c) If such court, Board or other body does not specify where such community service should be performed, the Supervision Committee must specify the place.

(Date of commencement of s. 60: 1 October, 2004.)

61. Seeking employment.—(1) A person subject to community corrections who is required in terms of section 52 (1) (c) to seek employment, must make a reasonable effort to find employment and must furnish evidence to the National Commissioner of the attempts that he or she has made in this regard.

(2) The National Commissioner must assist in the attempt to find employment.

(Date of commencement of s. 61: 1 October, 2004.)

62. Employment.—A person subject to community corrections who is required in terms of section 52 (1) (d) to take up and remain in employment—

- (a) may not change his or her employment without the permission of the National Commissioner;
- (b) must perform the work to the best of his or her ability and comply with the conditions of the contract of employment; and
- (c) may not leave the place of employment during working hours, for purposes unrelated to the employment without the permission of the National Commissioner.

(Date of commencement of s. 62: 1 October, 2004.)

63. Compensation.—A person subject to community corrections who is required in terms of section 52 (1) (e) to pay compensation—

- (a) must provide the National Commissioner with a statement of personal income and expenditure; and

- (b) must submit proof as specified by the National Commissioner, of payment of compensation as ordered by the court.

(Date of commencement of s. 63: 1 October, 2004.)

64. Programmes.—(1) The court, Correctional Supervision and Parole Board or other body which has the authority to impose treatment, development and support programmes in terms of section 52 (1) (*f*) may specify what programmes the person subject to community corrections must follow.

(2) Only the court, Board or other body which sets the condition may change it, unless the condition itself provides that it may be changed by a Supervision Committee.

(3) If such court, Board or other body does not specify what programmes the person subject to community corrections should follow, the Supervision Committee must specify such programmes.

(4) The person concerned must attend such programmes and stay in attendance for the duration of each individual session of the entire programme, unless leave of absence from a session is granted by the National Commissioner.

(Date of commencement of s. 64: 1 October, 2004.)

65. Contribution to costs.—(1) A person who is required in terms of section 52 (1) (*h*) to make a contribution to the cost of the community corrections and a person on day parole must provide the National Commissioner with a statement of income and expenditure.

(2) The National Commissioner may, within the means of such person, determine the contribution to costs which that person must make and may adjust it during the period of supervision and day parole.

(Date of commencement of s. 65: 1 October, 2004.)

66. Fixed address.—(1) When the court, Correctional Supervision and Parole Board or other body which has the authority to impose community corrections, requires a person to live at a fixed address in terms of section 52 (1) (*j*) it must, after consultation with the National Commissioner, determine such address.

(2) Where an address was stipulated by such court, Board or other body but the National Commissioner has subsequently been satisfied that—

- (a) support will not be available to such person living there and that such support cannot be provided from other sources; or
- (b) living at such address will be incompatible with compliance with the prescribed conditions for community corrections,

the National Commissioner may declare the address unsuitable and refer the matter back to the court, Board or other body to stipulate another address, after consultation with the National Commissioner, failing which section 70 shall operate.

(Date of commencement of s. 66: 1 October, 2004.)

67. Use of alcohol or illegal drugs.—Where there is a reasonable suspicion that a person has used alcohol or illegal drugs in contravention of a condition set in terms of section 52 (1) (*k*), a correctional official may require such a person to allow a designated correctional medical practitioner to take a blood or urine sample in order to establish the presence and concentration of alcohol or drugs in the blood or urine.

[S. 67 substituted by s. 44 of Act No. 25 of 2008.]

(Date of commencement of s. 67: 1 October, 2004.)

68. Monitoring.—(1) Where a condition of monitoring is set in terms of section 52 (1) (*p*) it must specify the form of monitoring.

(2) If such monitoring involves the use of an electronic or other device it must be prescribed by regulation.

(3) The use of such device may infringe on the human dignity and privacy of the person in so far as it is proportionate to the objective.

(4) The National Commissioner may appoint persons in terms of section 96 (4) to assist correctional officials in such monitoring.

[Sub-s. (4) added by s. 45 of Act No. 25 of 2008.]

(Date of commencement of s. 68: 1 October, 2004.)

69. Additional conditions for children.—(1) A child who is subject to community corrections in terms of section 52 (1) (*q*), may be required to attend educational programmes whether or not he or she is otherwise subject to compulsory education.

(2) Where any child is subject to supervision in terms of this Chapter, the National Commissioner must, in addition to any programmes which the child in terms of section 52 (1) (*f*) may be required to take part in, ensure that if the child requires support he or she has access to adequate social work services, religious care, recreational programmes and psychological services.

(Date of commencement of s. 69: 1 October, 2004.)

70. Non-compliance.—(1) If the National Commissioner is satisfied that a person subject to community corrections has failed to comply with any aspect of the conditions imposed on him or her, or any duty placed upon him or her in terms of any section of this Chapter, the National Commissioner —

(*a*) may, depending on the nature and seriousness of the non-compliance—

(i) reprimand the person;

(ii) instruct the person to appear before the Correctional Supervision and Parole Board that is situated closest to the place of residence of such person or the Board which has jurisdiction within the area where the non-compliance took place, or other body which imposed the conditions of community corrections;

[Sub-para. (ii) substituted by s. 46 (*a*) of Act No. 25 of 2008 and by s. 11 of Act No. 5 of 2011.]

(iii) issue a warrant for the arrest of such person; and

(*b*) must, if he or she is satisfied that the person has a valid excuse for not complying with any such condition or duty, instruct that the community corrections be resumed subject to the same conditions or duties applicable to that person.

[Sub-s. (1) substituted by s. 26 of Act No. 32 of 2001.]

(2) (*a*) A warrant issued in terms of subsection (1) (*a*) (iii) may be executed by any peace officer as defined in section 1 of the Criminal Procedure Act.

[Para. (*a*) substituted by s. 46 (*b*) of Act No. 25 of 2008.]

(*b*) A person detained in terms of paragraph (*a*) must be brought before a court within 48 hours after arrest, which court must make an order as to the further detention and referral of the person to the authority responsible to deal with the matter.

(3) If the National Commissioner is satisfied that a person subject to community corrections has failed to meet the conditions imposed on him or her but that such failure

is due to a change in circumstances beyond the control of the person concerned, the National Commissioner may instruct such person to appear before the court, Correctional Supervision and Parole Board or other body which imposed the community corrections.

(4) If a person subject to community corrections fails to obey an instruction issued in terms of subsection (1) (b) or (3) the National Commissioner may issue a warrant in terms of subsection (1) (a) (iii) and act in terms of subsection (2).

[Sub-s. (4) substituted by s. 46 (c) of Act No. 25 of 2008.]

(Date of commencement of s. 70: 1 October, 2004.)

71. Change of conditions.—(1) If in the opinion of the National Commissioner a change of circumstances calls for a change in the conditions, the National Commissioner may apply to the court, Correctional Supervision and Parole Board or other body which ordered the imposition of community corrections, to amend the conditions which make up the community corrections in a particular case.

(2) When an application is made in terms of subsection (1) the National Commissioner must instruct the person undergoing community corrections to appear before such court, Board or other body.

(3) If such person fails to appear, the National Commissioner may issue a warrant in terms of section 70 (1) (a) (iii) for his or her arrest.

[Sub-s. (3) substituted by s. 47 of Act No. 25 of 2008.]

(Date of commencement of s. 71: 1 October, 2004.)

72. Complaints and requests.—(1) Every person subject to community corrections may direct complaints and requests to the head of the community corrections office in the area in which the community corrections is being served or to another correctional official designated by such a head of an office.

(2) The correctional official referred to in subsection (1) must record all such complaints and requests and the steps taken in dealing with them.

(3) The correctional official referred to in subsection (1) must deal with such complaints and requests promptly and inform the person subject to community corrections of the outcome.

(4) If such person is dissatisfied with the response to his or her complaint or request by the Head of Community Corrections, he or she may refer the matter to the National Commissioner, whose response must be communicated to the person concerned.

(Date of commencement of s. 72: 1 October, 2004.)

CHAPTER VII

RELEASE FROM CORRECTIONAL CENTRE AND PLACEMENT UNDER CORRECTIONAL SUPERVISION AND ON DAY PAROLE AND PAROLE

73. Length and form of sentences.—(1) Subject to the provisions of this Act—

- (a) a sentenced offender remains in a correctional centre for the full period of sentence; and
- (b) an offender sentenced to life incarceration remains in a correctional centre for the rest of his or her life.

(2) A sentenced offender must be released from a correctional centre and from any form of community corrections imposed in lieu of part of a sentence of incarceration when the term of incarceration imposed has expired.

(3) If a sentenced offender's release upon expiry of his or her sentence, is likely to result in his or her death or impairment of his or her health or to be a source of infection to others, the National Commissioner must inform the Department of Health, at least one month prior to the release of such offender or immediately if the condition became known less than a month prior to sentence expiry, in order for that Department to deal with such person in accordance with applicable legislation.

(4) In accordance with the provisions of this Chapter a sentenced offender may be placed under correctional supervision, day parole, parole or medical parole before the expiration of his or her term of incarceration.

(5) (a) A sentenced offender may be placed under correctional supervision, on day parole, parole or medical parole—

- (i) on a date determined by the Correctional Supervision and Parole Board; or
- (ii) in the case of an offender sentenced to life incarceration, on a date to be determined by the Minister.

(b) Such placement is subject to the provisions of Chapter VI and such offender accepting the conditions for placement.

(6) (a) Subject to the provisions of paragraph (b), a sentenced offender serving a determinate sentence or cumulative sentences of more than 24 months may not be placed on day parole or parole until such sentenced offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, half of the sentence, but day parole or parole must be considered whenever a sentenced offender has served 25 years of a sentence or cumulative sentences.

(aA) Subject to the provisions of paragraph (b), an offender serving a determinate sentence or cumulative sentences of not more than 24 months may not be placed on parole or day parole until such offender has served either the stipulated non-parole period, or if no non-parole period was stipulated, a quarter of the sentence.

(b) A person who has been sentenced to—

- (i) periodical incarceration must be detained periodically in a correctional centre as prescribed by regulation;
- (ii)
- (iii)
- (iv) life incarceration, may not be placed on day parole or parole until he or she has served at least 25 years of the sentence; or
- (v)
- (vi) any term of incarceration, excluding persons declared dangerous criminals in terms of section 286A of the Criminal Procedure Act, may be placed on day parole or parole on reaching the age of 65 years provided that he or she has served at least 15 years of such sentence.

(c) A person who has been declared a habitual criminal may be detained in a correctional centre for a period of 15 years and may not be placed on day parole or parole until after a period of at least seven years.

(d) A person who has been declared a dangerous criminal in terms of section 286A of the Criminal Procedure Act, must be referred back to court in accordance with section 75 (1) (b) of this Act, within seven days after the period as determined by the court, or 25 years, whichever is the shortest, has been served.

(7) (a) A person sentenced to incarceration under section 276 (1) (i) of the Criminal Procedure Act, must serve at least one sixth of his or her sentence before being

considered for placement under correctional supervision, unless the court has directed otherwise.

(b) A person sentenced to incarceration for a period not exceeding five years as an alternative to a fine under section 287 (4) (a) of the Criminal Procedure Act, may be considered for placement under correctional supervision by the National Commissioner or the Correctional Supervision and Parole Board as soon as possible after admission to a correctional centre subject to the confirmation of a suitable support system, unless the court has directed otherwise.

(c) A person sentenced to incarceration for a period exceeding five years as an alternative to a fine under section 287 (4) (b) of the Criminal Procedure Act, may be recommended to a court for placement under correctional supervision, except if the court has directed otherwise, in circumstances where such an offender has completed at least one quarter of the sentence and the remainder of the sentence until sentence expiry does not exceed five years.

(d) A person sentenced to incarceration for a definite period in terms of section 276 (1) (b) of the Criminal Procedure Act may not be placed under correctional supervision unless such sentence has been converted into correctional supervision in accordance with section 276A (3) of the said Act.

(e) A person sentenced to incarceration for a definite period under section 276 (1) (b) of the Criminal Procedure Act, may be referred to a court in accordance with section 276A (3) (a) of that Act, if the offender has completed at least a quarter of the effective sentence and the remainder of the sentence until sentence expiry does not exceed five years.

[S. 73 amended by s. 27 of Act No. 32 of 2001 and substituted by s. 12 of Act No. 5 of 2011.]

(Date of commencement of s. 73: 1 October, 2004.)

74. Correctional Supervision and Parole Boards.—(1) The Minister may—

- (a) name each Correctional Supervision and Parole Board;
- (b) specify the seat for each Board;
- (c) determine and amend the area of jurisdiction of each Board.

(2) The Minister must appoint one or more Correctional Supervision and Parole Boards consisting of—

- (a) a chairperson;
- (b) a vice-chairperson;
- (c)
[Para. (c) deleted by s. 28 (a) of Act No. 32 of 2001.]
- (d)
[Para. (d) deleted by s. 28 (a) of Act No. 32 of 2001.]
- (e) one official of the Department nominated by the National Commissioner;
and
[Para. (e) substituted by s. 28 (b) of Act No. 32 of 2001.]
- (f) two members of the community.

(3) The National Commissioner must designate the correctional official referred to in subsection (2) (e) to act as a secretary for a Board.

[Sub-s. (3) substituted by s. 50 (a) of Act No. 25 of 2008.]

(4) If the chairperson is absent from a meeting of the Board, the vice-chairperson must preside at that meeting.

(5) Three members constitute a quorum for a meeting of a Board and must include the chairperson or vice-chairperson.

[Sub-s. (5) substituted by s. 28 (c) of Act No. 32 of 2001.]

(6) Any decision of a Board must be taken by resolution of the majority of the members present at any meeting of that Board and, in the event of equality of votes, the person presiding shall have the casting vote as well as a deliberative vote.

(7) (a) A member of a Board—

(i) holds office for such period and on such conditions as the Minister may determine; and

(ii) may at any time resign by tendering written notification to the Minister.

(b) The Minister may remove a member from office on grounds of misbehaviour, incapacity or incompetence but such action by the Minister does not preclude disciplinary action against officials in the full-time service of the State as provided for in their conditions of service.

(c) If any member resigns, is removed from office or dies, the Minister may fill the vacancy by appointing a person in accordance with subsection (1) for the unexpired portion of the term of office of the predecessor.

(7A) (a) A Board may co-opt an official nominated by the National National Commissioner of the South African Police Service or an official nominated by the Director-General of the Department of Justice, or both such officials, for a meeting of the Board.

(b) Any such co-opted official may vote at the meeting of the Board.

[Sub-s. (7A) inserted by s. 28 (d) of Act No. 32 of 2001.]

(8) A member of a Board who is not in the full-time service of the State, may receive such remuneration and allowances as the National Commissioner may, on the recommendation of the Department of Public Service and Administration, determine.

[Sub-s. (8) substituted by s. 50 (b) of Act No. 25 of 2008.]

(Date of commencement of s. 74: 1 October, 2004.)

75. Powers, functions and duties of Correctional Supervision and Parole Boards.—(1) A Correctional Supervision and Parole Board, having considered the report on any sentenced offender serving a determinate sentence of more than 24 months submitted to it by the Case Management Committee in terms of section 42 and in the light of any other information or argument, may—

(a) subject to the provisions of paragraphs (b) and (c) and subsection (1A) place a sentenced offender under correctional supervision or day parole or grant parole or medical parole and, subject to the provisions of section 52, set the conditions of community corrections imposed on the sentenced offender;

[Para. (a) substituted by s. 29 (a) of Act No. 32 of 2001 and by s. 13 (a) of Act No. 5 of 2011.]

(b) in the case of any sentenced offender having been declared a dangerous criminal in terms of section 286A of the Criminal Procedure Act, make recommendations to the court on the granting or the placement under correctional supervision, day parole, parole or medical parole and on the period for and, subject to the provisions of section 52, the conditions of community corrections imposed on the sentenced offender; and

[Para. (b) substituted by s. 13 (a) of Act No. 5 of 2011.]

- (c) in respect of any sentenced offender serving a sentence of life incarceration, make recommendations to the Minister on granting of day parole, parole or medical parole, and, subject to the provisions of section 52, the conditions of community corrections to be imposed on such an offender.

[Sub-s. (1) amended by s. 51 (a) of Act No. 25 of 2008. Para. (c) substituted by s. 51 (b) of Act No. 25 of 2008 and by s. 13 (a) of Act No. 5 of 2011.]

(1A) (a) In all cases which involve offences identified in terms of subsection (1B), except where officials of both the South African Police Service and the Department of Justice are on the Board, the Board must request recommendations from the South African Police Service and the Department of Justice.

(b) Such recommendations must be submitted in writing within two months of being requested.

[Sub-s. (1A) inserted by s. 29 (b) of Act No. 32 of 2001.]

(1B) (a) The National Commissioner may, with the concurrence of the National Commissioner of the South African Police Service, the Director-General of the Department of Justice and the National Director of Public Prosecutions, identify offences for purposes of subsection (1A).

(b) The offences contemplated in paragraph (a) must be identified from categories of offences in respect of which sentences of incarceration in excess of a specified period have been imposed.

[Sub-s. (1B) inserted by s. 29 (b) of Act No. 32 of 2001.]

(2) (a) If the National Commissioner on the advice of a Supervision Committee requests a Board to cancel correctional supervision or day parole or parole except where the person concerned was originally serving a sentence of life incarceration, or to amend the conditions of community corrections imposed on a person, the Board must consider the matter within 14 days but its recommendations may be implemented provisionally prior to the decision of the Board.

(b) After consideration of such conditions the Board may cancel the correctional supervision or day parole or parole, or amend the conditions but if the person concerned refuses to accept the amended conditions, the correctional supervision or day parole or parole must be cancelled.

(c) If in the case of a person sentenced to life incarceration the National Commissioner, on the advice of a Supervision Committee, requests a Board to advise on the cancellation of parole or day parole or to amend the conditions of community corrections imposed on a person, the Board must within 14 days consider the matter and make recommendations on cancellation or amendment to the Minister but its recommendations may be implemented provisionally prior to the decision of the Minister.

[Para. (c) substituted by s. 51 (c) of Act No. 25 of 2008.]

(3) (a) Whenever a Board acts in terms of subsection (2) (a) or (c), it must notify the person or sentenced offender who is subject to community corrections to submit written representations or to appear before it in person or to be represented by any person, except a fellow sentenced offender, a correctional official or an official of the South African Police Service or the Department of Justice.

(b) A person or sentenced offender referred to in subsection (1) (c) must be informed by the Board of its recommendations and must confirm that the recommendations have been conveyed to him or her.

(c) In cases referred to in subsections (1) (c) and (2) (c) the Board must allow the person or sentenced offender to submit written representations with regard to the recommendation of the Board, and the Board must submit the representations, together with its report to the court.

(4) Where a complainant or relative is entitled in terms of the Criminal Procedure Act, to make representations or wishes to attend a meeting of a Board, the National Commissioner must inform the Board in question accordingly and that Board must inform the complainant or relative in writing when and to whom he or she may make representations and when and where a meeting will take place.

(4A) The Correctional Supervision and Parole Board may, whenever it acts in terms of this section, request any sentenced offender to present oral representations in order to clarify matters contained in his or her representation submitted to the Case Management Committee in terms of section 42 (3).

[Sub-s. (4A) inserted by s. 51 (d) of Act No. 25 of 2008.]

(5) If, after the Board has approved a sentenced offender being placed under correctional supervision or being granted day parole, parole or medical parole, and, prior to the implementation of the decision of the Board, the Case Management Committee reports to the Board that the circumstances of such an offender have changed to such an extent that it is not advisable to implement the decision, the implementation shall be deferred until the Board authorises it.

[Sub-s. (5) substituted by s. 51 (e) of Act No. 25 of 2008 and by s. 13 (b) of Act No. 5 of 2011.]

(6) When the Board or the Minister cancels correctional supervision, day parole, parole or medical parole, the matter may be reconsidered by the Board or the Minister within such period as the Board or the Minister deems fit, but the Board or the Minister must do so within two years.

[Sub-s. (6) substituted by s. 13 (c) of Act No. 5 of 2011.]

(7) Despite subsections (1) to (6), the National Commissioner may—

- (a) place under correctional supervision or day parole, or grant parole or medical parole to a sentenced offender serving a sentence of incarceration for 24 months or less and prescribe conditions in terms of section 52; or
- (b) cancel correctional supervision or day parole or parole or medical parole and alter the conditions for community corrections applicable to such person.

[Sub-s. (7) amended by s. 51 (f) of Act No. 25 of 2008 and substituted by s. 13 (c) of Act No. 5 of 2011.]

(8) A decision of the Board is final except that the Minister, the National Commissioner or the Inspecting Judge may refer the matter to the Correctional Supervision and Parole Review Board for reconsideration, in which case—

- (a) the decision of the Board is suspended pending the outcome of the decision of the Correctional Supervision and Parole Review Board; and
- (b) the record of the proceedings before the Board must be submitted to the Correctional Supervision and Parole Review Board.

[Sub-s. (8) substituted by s. 51 (g) of Act No. 25 of 2008 and by s. 13 (c) of Act No. 5 of 2011.]

(Date of commencement of s. 75: 1 October, 2004.)

76. Correctional Supervision and Parole Review Board.—(1) The Correctional Supervision and Parole Review Board is selected from the National Council and consists of—

- (a) a judge as chairperson;
- (b) a director of Public Prosecutions or a person nominated by that director;
[Para. (b) substituted by s. 52 of Act No. 25 of 2008.]
- (c) a member of the Department;
- (d) a person with special knowledge of the correctional system; and
- (e) two representatives of the public.

(2) The National Council must appoint the members for each meeting of the Correctional Supervision and Parole Review Board.

(3) The majority of the members of the Correctional Supervision and Parole Review Board constitute a quorum for a meeting of the Board.

(4) A decision of a majority of the members of the Correctional Supervision and Parole Review Board present is a decision of the Board and in the event of an equality of votes on any matter, the member presiding at the meeting has both a deliberative and a casting vote.

(Date of commencement of s. 76: 1 October, 2004.)

77. Powers of Correctional Supervision and Parole Review Board in respect of cases decided by Correctional Supervision and Parole Board.—(1) On consideration of a record submitted in terms of section 75 and any submission which the Minister, National Commissioner, Inspecting Judge or the sentenced offender concerned may wish to place before the Correctional Supervision and Parole Review Board, as well as such other evidence or argument as is allowed, the Correctional Supervision and Parole Review Board must—

- (a) confirm the decision; or
- (b) substitute its own decision and make any order which the Correctional Supervision and Parole Board ought to have made.

[Sub-s. (1) amended by s. 53 of Act No. 25 of 2008.]

(2) The Correctional Supervision and Parole Review Board must give reasons for its decision, which are to be made available to the Minister, National Commissioner, the person and the Correctional Supervision and Parole Board concerned in a specific matter and all other Correctional Supervision and Parole Boards for their information and guidance.

(Date of commencement of s. 77: 1 October, 2004.)

78. Powers of Minister in respect of offenders serving life sentences.—

(1) Having considered the record of proceedings of the Correctional Supervision and Parole Board and its recommendations in the case of a person sentenced to life incarceration, the National Council may, subject to the provisions of section 73 (6) (b) (iv), recommend to the Minister to grant parole or day parole and prescribe the conditions of community corrections in terms of section 52.

(2) If the Minister refuses to grant parole or day parole in terms of subsection (1), the Minister may make recommendations in respect of treatment, care, development and support of the sentenced offender which may contribute to improving the likelihood of future placement on parole or day parole.

(3) Where a Correctional Supervision and Parole Board acting in terms of section 73 recommends, in the case of a person sentenced to life incarceration, that parole or day

parole be withdrawn or that the conditions of community corrections imposed on such a person be amended, the Minister, on advice of the National Council, must consider and make a decision upon the recommendation.

(4) Where the Minister refuses or withdraws parole or day parole the matter must be reconsidered by the Minister, on advice of the National Council, within two years.

[S. 78 substituted by s. 54 of Act No. 25 of 2008.]

(Date of commencement of s. 78: 1 October, 2004.)

79. Medical parole.—(1) Any sentenced offender may be considered for placement on medical parole, by the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, if—

- (a) such offender is suffering from a terminal disease or condition or if such offender is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care;
- (b) the risk of re-offending is low; and
- (c) there are appropriate arrangements for the inmate's supervision, care and treatment within the community to which the inmate is to be released.

(2) (a) An application for medical parole shall be lodged in the prescribed manner, by—

- (i) a medical practitioner; or
- (ii) a sentenced offender or a person acting on his or her behalf.

(b) An application lodged, by a sentenced offender or a person acting on his or her behalf, in accordance with paragraph (a) (ii), shall not be considered by the National Commissioner, the Correctional Supervision and Parole Board or the Minister, as the case may be, if such application is not supported by a written medical report recommending placement on medical parole.

- (c) The written medical report must include, amongst others, the provision of—
 - (i) a complete medical diagnosis and prognosis of the terminal illness or physical incapacity from which the sentenced offender suffers;
 - (ii) a statement by the medical practitioner indicating whether the offender is so physically incapacitated as to limit daily activity or inmate self-care; and
 - (iii) reasons as to why the placement on medical parole should be considered.

(3) (a) The Minister must establish a medical advisory board to provide an independent medical report to the National Commissioner, Correctional Supervision and Parole Board or the Minister, as the case may be, in addition to the medical report referred to in subsection (2) (c).

(b) Nothing in this section prohibits a medical practitioner or medical advisory board from obtaining a written medical report from a specialist medical practitioner.

(4) (a) The placement of a sentenced offender on medical parole must take place in accordance with the provisions of Chapter VI and is subject to—

- (i) the provision of informed consent by such offender to allow the disclosure of his or her medical information, to the extent necessary, in order to process an application for medical parole; and
- (ii) the agreement by such offender to subject himself or herself to such monitoring conditions as set by the Correctional Supervision and Parole Board in terms of section 52, with an understanding that such conditions

may be amended and or supplemented depending on the improved medical condition of such offender.

(b) An offender placed on medical parole may be requested to undergo periodical medical examinations by a medical practitioner in the employ of the Department.

(5) When making a determination as contemplated in subsection (1) (b), the following factors, amongst others, may be considered:

- (a) Whether, at the time of sentencing, the presiding officer was aware of the medical condition for which medical parole is sought in terms of this section;
- (b) any sentencing remarks of the trial judge or magistrate;
- (c) the type of offence and the length of the sentence outstanding;
- (d) the previous criminal record of such offender; or
- (e) any of the factors listed in section 42 (2) (d).

(6) Nothing in this section prohibits a complainant or relative from making representations in accordance with section 75 (4).

(7) A decision to cancel medical parole must be dealt with in terms of section 75 (2) and (3): Provided that no placement on medical parole may be cancelled merely on account of the improved medical condition of an offender.

(8) (a) The Minister must make within six months after promulgation of this Act regulations regarding the processes and procedures to follow in the consideration and administration of medical parole.

(b) The regulations referred to in paragraph (a), must be submitted to Parliament for approval—

- (i) at least one month before promulgation, if Parliament is in session; or
- (ii) if Parliament is not in session, within one month after the next ensuing session starts.

[S. 79 substituted by s. 55 of Act No. 25 of 2008 and by s. 14 of Act No. 5 of 2011.]

(Date of commencement of s. 79: 1 October, 2004.)

80. Special remission of sentence for highly meritorious service.—(1) A Correctional Supervision and Parole Board may, on the recommendation of the National Commissioner, grant to a sentenced offender, except to a person serving a life sentence or a sentence in terms of section 286A of the Criminal Procedure Act, who has acted highly meritoriously, special remission of sentence not exceeding two years either unconditionally or subject to such conditions as the Board may determine.

[Sub-s. (1) substituted by s. 56 of Act No. 25 of 2008.]

(2) Special remission in terms of this section may not result in the sentenced offender serving less than a stipulated non-parole period or, if no such period has been stipulated, the period determined by the National Council in terms of section 73A.

[Sub-s. (2) substituted by s. 56 of Act No. 25 of 2008.]

(Date of commencement of s. 80: 1 October, 2004.)

81. Special measures for reduction of correctional centre population.—(1) If the Minister is satisfied that the correctional centre population in general or at a particular correctional centre is reaching such proportions that the safety, human dignity and physical care of the sentenced offenders are being affected materially the matter must be referred to the National Council.

[Sub-s. (1) substituted by s. 30 (a) of Act No. 32 of 2001.]

(2) The National Council may recommend the advancement of the approved date for placement of any sentenced offender or a group of sentenced offenders under community corrections and the Minister may act accordingly.

[Sub-s. (2) substituted by s. 57 of Act No. 25 of 2008.]

(3) Community corrections granted in terms of subsection (2) is subject to such conditions as may be imposed by the Correctional Supervision and Parole Board under whose jurisdiction the sentenced offenders may fall or the National Commissioner in terms of section 75 (7).

[Sub-s. (3) substituted by s. 57 of Act No. 25 of 2008.]

(4)

[Sub-s. (4) added by s. 30 (b) of Act No. 32 of 2001 and deleted by s. 18 of Act No. 55 of 2002.]

(Date of commencement of s. 81: 1 October, 2004.)

82. Powers of President.—(1) Despite any provision to the contrary, the President may—

(a) at any time authorise the placement on correctional supervision or parole of any sentenced offender, subject to such conditions as may be recommended by the Correctional Supervision and Parole Board under whose jurisdiction such sentenced offender may fall or, in the case of a person serving a life sentence, by the Minister; and;

[Para. (a) substituted by s. 58 (a) of Act No. 25 of 2008.]

(b) remit any part of a sentenced offender's sentence.

[Para. (b) substituted by s. 58 (a) of Act No. 25 of 2008.]

(2) Nothing in this Act affects the power of the President to pardon or relieve sentenced offenders.

[Sub-s. (2) substituted by s. 58 (b) of Act No. 25 of 2008.]

(Date of commencement of s. 82: 1 October, 2004.)

CHAPTER VIII NATIONAL COUNCIL FOR CORRECTIONAL SERVICES

83. Structure of National Council.—(1) The Minister must appoint a National Council.

(2) The National Council consists of—

(a) three judges of the Supreme Court of Appeal of South Africa or of the High Court of South Africa appointed after consultation with the Chief Justice;

[Para. (a) substituted by s. 59 (a) of Act No. 25 of 2008.]

(b) a magistrate of a regional division appointed after consultation with the chairperson of the Magistrates' Commission;

(c) a director or Deputy Director of Public Prosecutions appointed after consultation with the National Director of Public Prosecutions;

(d) two members of the Department, of or above the rank of director, appointed after consultation with the National Commissioner;

- (e) a member of the South African Police Service, of or above the rank of director, appointed after consultation with the National Commissioner of the South African Police Service;
- (f) a member of the Department of Welfare, of or above the rank of director, appointed after consultation with the Director-General of Welfare;
- (g) two persons with special knowledge of the correctional system who are not in full-time service of the State; and
- (h) four or more persons, not in the full-time service of the State, appointed as representatives of the public in consultation with the relevant Parliamentary Committees.

[Para. (h) substituted by s. 59 (a) of Act No. 25 of 2008.]

(3) (a) Members of the National Council hold office for such period as the Minister determines at the time of their appointment.

(b) If there are valid grounds for doing so, the Minister may terminate the appointment of a member.

(4) The Minister must appoint one of the judges referred to in subsection (2) (a) as chairperson and the other two as vice-chairpersons of the National Council.

[Sub-s. (4) substituted by s. 59 (b) of Act No. 25 of 2008.]

(5) The majority of members of the National Council constitute a quorum for a meeting of the Council.

(6) A decision of majority of the members of the National Council present shall be a decision of the Council and in the event of an equality of votes, the member presiding at the meeting shall have both a deliberative and the casting vote.

(7) A member of the National Council who is not in the service of the State may receive such allowances as may be determined by the National Commissioner in consultation with the Minister of State Expenditure.

(Date of commencement of s. 83: 19 February, 1999.)

84. Functions and duties of National Council.—(1) The primary function of the National Council is to advise, at the request of the Minister or on its own accord, in developing policy in regard to the correctional system and the sentencing process.

(2) The Minister must refer draft legislation and major proposed policy developments regarding the correctional system to the National Council for its comments and advice.

(3) The National Commissioner must provide the necessary information and resources to enable the National Council to perform its primary function.

(4) The National Council may examine any aspect of the correctional system and refer any appropriate matter to the Inspecting Judge.

(5) The National Council must fulfil any other function ascribed to it in this Act.

(Date of commencement of s. 84: 19 February, 1999.)

CHAPTER IX THE JUDICIAL INSPECTORATE FOR CORRECTIONAL SERVICES

[Heading substituted by s. 60 of Act No. 25 of 2008.]

85. Establishment of Judicial Inspectorate for Correctional Services.—(1) The Judicial Inspectorate for Correctional Services is an independent office under the control of the Inspecting Judge.

(2) The object of the Judicial Inspectorate for Correctional Services is to facilitate the inspection of correctional centres in order that the Inspecting Judge may report on the treatment of inmates in correctional centres and on conditions in correctional centres.

[S. 85 amended by s. 31 of Act No. 32 of 2001 and substituted by s. 61 of Act No. 25 of 2008.]

(Date of commencement of s. 85: 19 February, 1999.)

86. Inspecting Judge.—(1) The President must appoint the Inspecting Judge who must be—

- (a) a judge of the High Court who is in active service as defined in section 1 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); or
- (b) a judge who has been discharged from active service in terms of section 3 of the said Act.

(2) An Inspecting Judge in active service must be seconded from the Supreme Court of Appeal or the High Court and holds office as such during the period of active service or until the Inspecting Judge requests to be released to resume judicial duties.

(3) The Inspecting Judge continues to receive the salary, allowances, benefits and privileges attached to the office of a judge.

(Date of commencement of s. 86: 19 February, 1999.)

87.

[S. 87 repealed by s. 62 of Act No. 25 of 2008.]

(Date of commencement of s. 87: 19 February, 1999.)

88. Conditions of service of retired judges.—(1) Should the Inspecting Judge or an Assistant be a judge retired from active service in terms of section 3 (1) (a) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), any period of service as Inspecting Judge or an Assistant shall be reckoned as service performed in terms of section 7 (1) of the said Act and the provisions of subsections (3) and (6) thereof shall apply to such appointment.

(2) Should the appointee be a judge retired from active service in terms of section 3 (1) (b), (c) or (d) of the said Act, the remuneration payable to such appointee shall be determined by the Minister of Justice or agreed with the prospective appointee.

(Date of commencement of s. 88: 19 February, 1999.)

88A. Appointment of the Chief Executive Officer.—(1) The Inspecting Judge must identify a suitably qualified and experienced person as Chief Executive Officer, who—

- (a) is responsible for all administrative, financial and clerical functions of the Judicial Inspectorate;
- (b) is accountable to the National Commissioner for all the monies received by the Judicial Inspectorate; and
- (c) is under control and authority of the Inspecting Judge.

(2) The person contemplated in subsection (1) must be appointed by the National Commissioner.

(3) The appointment and other conditions of service, including salary and allowances of the Chief Executive Officer are regulated by the Public Service Act.

(4) Any matters relating to misconduct and incapacity of the Chief Executive Officer must be referred to the National Commissioner by the Inspecting Judge.

[S. 88A inserted by s. 63 of Act No. 25 of 2008.]

89. Appointment of staff and Assistants.—(1) The Chief Executive Officer must appoint staff as may be necessary to enable the Judicial Inspectorate for Correctional Services to perform its functions in terms of this Act.

(2) The staff component must be established in accordance with the Public Service Act.

(3) The conditions of service including salaries and allowances of such staff are regulated in terms of the Public Service Act.

(4) (a) The Chief Executive Officer must appoint one or more persons with legal, medical, penological or any other expertise as assistants and when required by the Inspecting Judge, to assist the Inspecting Judge with any specialised aspect of inspection or investigation.

(b) Such persons must be appointed for a fixed period or until the completion of a specific task.

(c) The remuneration of such persons must be determined in accordance with the Public Service Act.

(d) Such persons must perform such functions as authorised and directed by the Inspecting Judge.

[S. 89 amended by s. 32 of Act No. 32 of 2001 and substituted by s. 64 of Act No. 25 of 2008.]

(Date of commencement of s. 89: 19 February, 1999.)

90. Powers, functions and duties of Inspecting Judge.—(1) The Inspecting Judge inspects or arranges for the inspection of correctional centres and remand detention facilities in order to report on the treatment of inmates in correctional centres and remand detention facilities and on conditions and any corrupt or dishonest practices in correctional centres and remand detention facilities.

[Sub-s. (1) substituted by s. 15 of Act No. 5 of 2011.]

(2) The Inspecting Judge may only receive and deal with the complaints submitted by the National Council, the Minister, the National Commissioner, a Visitors' Committee and, in cases of urgency, an Independent Correctional Centre Visitor and may of his or her own volition deal with any complaint.

(3) The Inspecting Judge must submit a report on each inspection to the Minister and the relevant Parliamentary Committees on Correctional Services.

[Sub-s. (3) substituted by s. 65 (a) of Act No. 25 of 2008.]

(4) (a) The Inspecting Judge must submit an annual report to the President and the Minister.

(b) The report must be tabled in Parliament by the Minister.

(5) For the purpose of conducting an investigation, the Inspecting Judge may make any enquiry and hold hearings.

(6) At a hearing, sections 3, 4 and 5 of the Commissions Act, 1947 (Act No. 8 of 1947), apply as if the Inspecting Judge and the secretary of the Judicial Inspectorate were the chairperson and secretary of a Commission, respectively.

(7) The Inspecting Judge may assign any of his or her functions to inspectors, except where a hearing is to be conducted by the Inspecting Judge.

[Sub-s. (7) substituted by s. 65 (b) of Act No. 25 of 2008.]

(8)

[Sub-s. (8) deleted by s. 65 (c) of Act No. 25 of 2008.]

(9) The Inspecting Judge may make such rules, not inconsistent with this Act, as are considered necessary or expedient for the efficient functioning of the Judicial Inspectorate.

(10) The Inspecting Judge must perform any other function ascribed to him or her in this Act.

(Date of commencement of s. 90: 19 February, 1999.)

91. Expenses of Judicial Inspectorate.—The Department is responsible for all expenses of the Judicial Inspectorate.

(Date of commencement of s. 91: 19 February, 1999.)

CHAPTER X INDEPENDENT CORRECTIONAL CENTRE VISITORS

92. Appointment of Independent Correctional Centre Visitors.—(1) At the request of and in consultation with the Inspecting Judge, the Chief Executive Officer must as soon as practicable, after publicly calling for nominations and consulting with community organisations, appoint an Independent Correctional Centre Visitor for each correctional centre.

[Sub-s. (1) substituted by s. 66 of Act No. 25 of 2008.]

(2) An Independent Correctional Centre Visitor holds office for such period as the Chief Executive Officer may determine at the time of such appointment in consultation with the Inspecting Judge.

[Sub-s. (2) substituted by s. 66 of Act No. 25 of 2008.]

(3) The Chief Executive Officer may at any time, if valid grounds exist, suspend or terminate the service of an Independent Correctional Centre Visitor.

[Sub-s. (3) substituted by s. 66 of Act No. 25 of 2008.]

(Date of commencement of s. 92: 19 February, 1999.)

93. Powers, functions and duties of Independent Correctional Centre Visitors.—(1) An Independent Correctional Centre Visitor shall deal with the complaints of inmates by—

- (a) regular visits;
- (b) interviewing offenders in private;
- (c) recording complaints in an official diary and monitoring the manner in which they have been dealt with; and
- (d) discussing complaints with the Head of the Correctional Centre, or the relevant subordinate correctional official, with a view to resolving the issues internally.

[Sub-s. (1) amended by s. 67 (a) of Act No. 25 of 2008.]

(2) An Independent Correctional Centre Visitor, in the exercise and performance of such powers, functions and duties, must be given access to any part of the correctional centre and to any document or record.

(3) The Head of the Correctional Centre must assist an Independent Correctional Centre Visitor in the performance of the assigned powers, functions and duties.

(4) Should the Head of the Correctional Centre refuse any request from an Independent Correctional Centre Visitor relating to the functions and duties of such a Visitor, the dispute must be referred to the Inspecting Judge, whose decision will be final.

(5) An Independent Correctional Centre Visitor must report any unresolved complaint to the Visitors' Committee and may, in cases of urgency or in the absence of such a committee, refer such complaint to the Inspecting Judge.

(6) The Inspecting Judge may make rules concerning, or on the appointment of an Independent Correctional Centre Visitor, specify, the number of visits to be made to the correctional centre over a stated period of time and the minimum duration of a visit, or any other aspect of the work of an Independent Correctional Centre Visitor.

(7) Each Independent Correctional Centre Visitor must submit a quarterly report to the Inspecting Judge, which shall include the duration of visits, the number and nature of complaints dealt with, and the number and nature of the complaints referred to the relevant Visitors' Committee.

(8)

[Sub-s. (8) deleted by s. 67 (b) of Act No. 25 of 2008.]

(Date of commencement of s. 93: 19 February, 1999.)

94. Visitors' Committee.—(1) Where appropriate, the Inspecting Judge may establish a Visitors' Committee for a particular area consisting of the Independent Correctional Centre Visitors appointed to correctional centres in that area.

(2) The Committee must meet at least quarterly.

(3) The functions of the Committee are—

- (a) to consider unresolved complaints with a view to their resolution;
- (b) to submit to the Inspecting Judge those complaints which the Committee cannot resolve;
- (c) to organise a schedule of visits;
- (d) to extend and promote the community's interest and involvement in correctional matters; and
- (e) to submit minutes of meetings to the Inspecting Judge.

(Date of commencement of s. 94: 19 February, 1999.)

CHAPTER XI COMPLIANCE MANAGEMENT

[Heading substituted by s. 33 of Act No. 32 of 2001 and by s. 68 of Act No. 25 of 2008.]

95. Complaints monitoring.—(1) The National Commissioner must monitor compliance with relevant prescriptions by means of internal auditing, performance auditing, inspections and investigations to promote the economical and efficient operation of the Department and to ensure that the objectives and principles of this Act are met.

(2) Such compliance monitoring must assess, at regular intervals, the effectiveness of internal control at national and regional level, individual correctional centres including public-private partnership correctional centres and community corrections, by—

- (a) determining whether the departmental operations are conducted effectively;
- (b) reviewing the reliability of financial, operational and management information;
- (c) ascertaining whether departmental assets and interests are controlled and safeguarded from losses;
- (d) assessing the effective utilisation of human and other resources; and
- (e) monitoring whether established objectives for programmes are being achieved.

(3) The National Commissioner must establish appropriate mechanisms for compliance monitoring.

[S. 65 amended by s. 34 of Act No. 32 of 2001 and substituted by s. 69 of Act No. 25 of 2008.]

(Date of commencement of s. 95: 19 February, 1999.)

95A. Departmental Investigation Unit.—The National Commissioner must establish a unit to investigate theft, fraud, corruption and maladministration by correctional officials.

[S. 95A inserted by s. 70 of Act No. 25 of 2008.]

95B. Code enforcement.—The National Commissioner must establish a unit to institute disciplinary proceedings and to prosecute in disciplinary matters resulting from any investigation contemplated in section 95A.

[S. 95B inserted by s. 70 of Act No. 25 of 2008.]

95C. Report of Commissioner.—(1) The National Commissioner must include in the annual report to Parliament an account of the process and results of—

- (a) the compliance monitoring in terms of section 95;
- (b) the investigations contemplated in section 95A; and
- (c) the disciplinary proceedings contemplated in section 95B.

(2) The National Commissioner must, on request, send a copy of any account contemplated in subsection (1) to the Inspecting Judge.

[S. 95C inserted by s. 70 of Act No. 25 of 2008.]

CHAPTER XII OFFICIALS OF THE DEPARTMENT

96. Powers, functions and duties of correctional officials.—(1) The Department and every correctional official in its service must strive to fulfil the purpose of this Act and to that end every correctional official must perform his or her duties under this Act.

(2) (a) Subject to the provisions of subsection (1), the relationship between the Department as employer and every correctional official in the service of the Department is regulated by the provisions of the Labour Relations Act and the Public Service Act.

(b) Notwithstanding item 6 (2) of Schedule 8 to the Labour Relations Act, where a service of the Department is designated as an essential service in terms of section 71 of that Act, and an official who provides such service participates in a strike that does not comply with the provisions of chapter IV of that Act and the strike constitutes a threat to the safety of inmates, officials or the public, the official in question may be summarily dismissed, if such dismissal is substantively fair, as contemplated in item 6 (1) of that Schedule.

[Sub-s. (2) substituted by s. 71 (a) of Act No. 25 of 2008.]

(3) Subject to the provisions of this Act and the provisions of the Labour Relations Act and having regard to the operational requirements of the Department, the National Commissioner shall determine the qualifications for appointment and promotion and decide on the appointment, promotion and transfer of correctional officials, but—

- (a) the appointment or promotion of a correctional official to or above the post level of director takes place in consultation with the Minister;
- (b) all persons who qualify for appointment, promotion or transfer must be considered;
- (c) the assessment of persons shall be based on level of training, relevant skills, competence, and the need to redress the imbalances of the past in order to achieve a Department broadly representative of the South African population, including representation according to race, gender and disability;
- (d) despite the provisions of paragraph (c), the National Commissioner may, subject to the conditions prescribed by regulation, approve the appointment, transfer or promotion of persons to promote the basic values and principles referred to in section 195 (1) of the Constitution; and

[Para. (d) substituted by s. 35 (a) of Act No. 32 of 2001.]

- (e) for the purposes of promotion or transfer, the National Commissioner may exempt a correctional official who is exceptionally skilled, has special training, renders exceptional service, or has successfully completed a prescribed departmental training course, from the requirements of the Code of Remuneration.

(4) (a) The National Commissioner may appoint unpaid voluntary workers who are not employees of the Department.

(b) Such workers have the same duties and are subject to the same restrictions as correctional officials but may only exercise the powers of correctional officials to the extent determined by the National Commissioner.

(5) The provisions relating to the retirement, resignation or discharge of correctional officials contained in the Correctional Services Act, 1959 (Act No. 8 of 1959), remain in force unless amended in the Bargaining Council for the Department of Correctional Services in terms of the Labour Relations Act and the Public Service Act.

[Sub-s. (5) amended by s. 35 (b) of Act No. 32 of 2001 and substituted by s. 71 (b) of Act No. 25 of 2008.]

97. Delegation of powers.—(1) The Minister may delegate any of the powers vested in him or her by this Act to the National Commissioner, except the powers contemplated in section 134 of this Act.

[Sub-s. (1) substituted by s. 36 of Act No. 32 of 2001.]

(2) The National Commissioner may delegate any of the powers vested in him or her by this Act or any other Act to any correctional official or other person employed by

the Department and may delegate any of the delegated powers in terms of subsection (1) to a correctional official of a post level of Deputy Director or higher.

[Sub-s. (2) substituted by s. 36 of Act No. 32 of 2001.]

(3) Any delegation in terms of this section takes effect on date of publication in the *Gazette*.

(Date of commencement of s. 97: 19 February, 1999.)

98. Professionals.—Any professional correctional official appointed by the National Commissioner to work directly with inmates and sentenced offenders subject to community corrections retains his or her professional discretion, but is still subject to all the prescripts not in conflict with his or her ethical or professional code applicable to correctional officials.

[S. 98 substituted by s. 72 of Act No. 25 of 2008.]

CHAPTER XIII GENERAL POWERS OF ENFORCEMENT

99. Access to correctional centres.—(1) A judge of the Constitutional Court, Supreme Court of Appeal or High Court, and a magistrate within his or her area of jurisdiction, may visit a correctional centre at any time.

(2) A judge and a magistrate referred to in subsection (1) must be allowed access to any part of a correctional centre and any documentary record, and may interview any inmate and bring any matter to the attention of the National Commissioner, the Minister, the National Council or the Inspecting Judge.

(3) (a) Members of the parliamentary Portfolio Committee on Correctional Services and the relevant committee of the National Council of Provinces and members of the National Council may visit any correctional centre at any time.

(b) Members referred to in paragraph (a) must be allowed access to any part of a correctional centre and any documentary record.

(4) A Sheriff or Deputy Sheriff must be allowed access to any inmate when this is necessary in the performance of official duties.

(5) The National Commissioner may permit any person other than those mentioned in subsections (1) to (4) to visit an inmate, a correctional centre or any specific section of a correctional centre for any special or general purpose.

[Sub-s. (5) substituted by s. 73 of Act No. 25 of 2008.]

100. Arrest.—(1) In addition to the powers of arrest which a correctional official has as a peace officer in terms of the Criminal Procedure Act, any correctional official may arrest without a warrant any person whom he or she reasonably suspects of having committed an offence defined in this Act.

(2) The Criminal Procedure Act, shall apply to any exercise of powers in terms of subsection (1) as if the correctional official who was performing an arrest was acting as a peace officer in terms of section 40 of the Criminal Procedure Act.

101. Entry, search and seizure.—(1) In addition to the powers of a correctional official to search inmates, their cells and their property and to seize articles in terms of section 27, a correctional official also has the power to enter any premises, to search without warrant any other person or place and seize any article when this is reasonably necessary for—

- (a) maintaining the safe custody of an inmate, the security of a correctional centre and controlling access of persons to and permissibility of goods in a correctional centre;

[Para. (a) substituted by s. 74 (a) of Act No. 25 of 2008.]

- (b) carrying out any sentence or order in terms of which a person is subject to community corrections;

[Para. (b) amended by s. 74 (b) of Act No. 25 of 2008.]

- (c) preventing, or gathering evidence of, the commission of any offence under this Act; or

[Para. (c) amended by s. 74 (b) of Act No. 25 of 2008.]

- (d) investigating theft, fraud, corruption and maladministration by correctional officials.

[Para. (d) added by s. 74 (b) of Act No. 25 of 2008.]

(2) Despite the provisions of subsection (1)—

- (a) a correctional official may not search another correctional official or seize his or her property without his or her consent or being authorised to do so by the National Commissioner but a general authorisation to search other correctional officials may be granted to a correctional official who is required to act in order to control access to or maintain secure custody within a correctional centre, or to give effect to subsection (1) (d); and

- (b) action cannot be taken in terms of subsection (1) (c) or (d) outside a correctional centre unless a search warrant has been issued by a magistrate but a correctional official may act in terms of subsection (1) (c) or (d) without a warrant when he or she on reasonable grounds believes that—

- (i) a warrant will be issued authorising action in terms of sub-section (1) (c) or (d); and

- (ii) the delay in obtaining such a warrant would defeat the object of the search.

[Sub-s. (2) substituted by s. 74 (c) of Act No. 25 of 2008.]

(3) (a) The provisions of section 21 of the Criminal Procedure Act, relating to the issue of a warrant to a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

(b) The provisions of section 27 of the Criminal Procedure Act, relating to resistance to entry or search by a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

(c) The provisions of section 29 of the Criminal Procedure Act, relating to the manner in which a search must be conducted by a police official apply, with the necessary changes, to a correctional official acting in terms of this section.

(4) (a) The National Commissioner may sell any property seized in terms of this Act or the property of a deceased or escaped offender which is in the care of the Department by public auction, if it is not lawfully claimed within six months after being seized or after the death or escape.

(b) The proceeds of the sale may be appropriated in settlement of any claims by the State against the applicable person and the balance, if any, must be paid into the National Revenue Fund.

(c) If, after the period of six months referred to in paragraph (a), a person proves to the National Commissioner that he or she is lawfully entitled to the balance of the proceeds, the balance must be paid to that person.

[Sub-s. (4) added by s. 37 of Act No. 32 of 2001.]

102. Use of force.—(1) In addition to the use of force authorised in terms of any other provision of this or any other Act, which include mechanical restraints, non-lethal incapacitating devices, fire-arms and other weapons, any correctional official is authorised to use force against any person who assists an escapee or who disrupts or threatens to disrupt the operation of a correctional centre or the enforcement of the conditions of community corrections.

(2) The use of force is authorised to achieve the objectives in subsection (1) subject to the following restrictions:

- (a) That no other means are available and that the minimum degree of force proportionate to the said objectives is used; and
- (b) force may be used only when authorised by the Head of the Correctional Centre or the Head of Community Corrections unless a correctional official reasonably believes that the use of force is immediately necessary and that the Head of the Correctional Centre or the Head of Community Corrections would have permitted the use of force.

(3) In the case of the use of force without prior recourse the correctional official must report such action as soon as reasonably possible to the Head of the Correctional Centre or the Head of Community Corrections.

CHAPTER XIV PUBLIC PRIVATE PARTNERSHIP CORRECTIONAL CENTRES

103. Contracts for public-private partnership correctional centres.—(1) The Minister may, subject to any law governing the award of contracts by the State, with the concurrence of the Minister of Finance and the Minister of Public Works, enter into a contract with any party to design, construct, finance and operate any correctional centre or part of a correctional centre established or to be established in terms of section 5.

(2) The contract period in respect of the operation of a correctional centre may not be for more than 25 years.

(Date of commencement of s. 103: 19 February, 1999.)

104. Duties and restrictions applying to Contractors.—(1) Subject to limitations in this Act, the Contractor must contribute to maintaining and protecting a just, peaceful and safe society by—

- (a) enforcing the sentences of the courts in the manner prescribed by this Act;
- (b) detaining all sentenced offenders in safe custody whilst ensuring their human dignity; and
- (c) by promoting the social responsibility and the human development of all sentenced offenders.

(2) Within 21 days after having been notified of the awarding of such contract, the Contractor must apply to the Essential Services Committee established under section 70 of the Labour Relations Act, to have the whole of the service to be provided under the contract declared as an essential service.

(3) The Contractor may make correctional centre rules only with the prior permission of the National Commissioner.

(4) The Contractor may not—

- (a) take disciplinary action against sentenced offenders or impose penalties on them;
- (b) be involved in the determination or the computation of sentences;
- (c) determine at which correctional centre a sentenced offender should be detained;
- (d) decide upon the placement or release of a sentenced offender;
- (e) be involved in the implementation of community corrections;
- (f) grant temporary leave; and
- (g) subcontract, cede, assign or delegate any of the functions under the contract unless authorised to do so under the contract.

(Date of commencement of s. 104: 19 February, 1999.)

105. Appointment of Controller.—The National Commissioner must appoint a Controller for every public-private partnership correctional centre.

(Date of commencement of s. 105: 19 February, 1999.)

106. Powers, functions and duties of Controller.—(1) The Controller must monitor the daily operation of the public-private partnership correctional centre and report to the National Commissioner.

(2) The Controller may order the Director and custody officials in the employ of the contractor to—

- (a) conduct any search contemplated in section 27 (2) (a), (b) or (e);
[Para. (a) substituted by s. 38 of Act No. 32 of 2001.]
- (b) detain separately a sentenced offender or sentenced offenders of a specific class in the circumstances contemplated in section 30;
- (c) apply approved mechanical means of restraint contemplated in section 31 to a sentenced offender detained in segregation for a period not exceeding 30 days;
[Para. (c) substituted by s. 75 of Act No. 25 of 2008.]
- (d) use force contemplated in section 32;
- (e) use non-lethal incapacitating devices contemplated in section 33;
- (f) use firearms contemplated in section 34; and
- (g) use other weapons contemplated in section 35.

(Date of commencement of s. 106: 19 February, 1999.)

107. Appointment of Director.—(1) With the prior approval of the National Commissioner, the Contractor must appoint a Director to serve as the head of the public-private partnership correctional centre.

(2) The Director is a custodial official and subject to certification contemplated in section 109.

(Date of commencement of s. 107: 19 February, 1999.)

108. Powers, functions and duties of Director.—The Director of every public-private partnership correctional centre—

- (a) is responsible for its operation and has the same powers, duties and functions as the Head of the Correctional Centre, subject to the restrictions contained in this Act and the contract;
- (b) for the purposes of part C of Chapter III of this Act and Section 340 of the Criminal Procedure Act, has the functions of the Head of the Correctional Centre;
- (c) in case of urgency the Director may authorise the temporary application of the measures contemplated in section 106 (2) if he or she reasonably believes that delay in obtaining such authorisation would defeat the object of that section; and
- (d) must report as soon as possible to the Controller on any such action.

(Date of commencement of s. 108: 19 February, 1999.)

109. Appointment of custody officials.—(1) The Contractor must appoint custody officials to perform custodial duties.

(2) No employee of the Contractor may perform custodial duties unless he or she has been certified as a custody official by the National Commissioner.

(3) A custody official may be certified by the National Commissioner, only if the standards of qualifications, prescribed by regulation are satisfied.

(4) The National Commissioner must keep a register, with—

- (a) the full names and identity number of each certified custody official;
- (b) particulars of each custody official whose certification has either been suspended or revoked; and
- (c) such other particulars as required by the National Commissioner.

(5) (a) The certification of any custody official may be suspended by the Controller—

- (i) pending trial for any offence;
- (ii) pending any disciplinary hearing into a charge of misconduct arising from, or in connection with, the performance of his or her duties; or
- (iii) pending any investigation into his or her fitness or competency to perform custodial duties.

(b) The Controller must notify the National Commissioner of the decision to suspend the certification of a custody official.

(6) The National Commissioner may, after a custody official has been suspended and been given the opportunity to make representations, revoke the suspension or the certification.

(Date of commencement of s. 109: 19 February, 1999.)

110. Powers and duties of custody officials.—A custody official has the powers and duties of a correctional official laid down by this Act, except in regard to matters referred to in section 104 (4) or restricted elsewhere in the Act, the regulations or in the contract.

(Date of commencement of s. 110: 19 February, 1999.)

111. Preservation of confidentiality.—(1) Every employee of the Contractor and in the case of subcontractor, any employee of a subcontractor, must preserve confidentiality in respect of any information acquired in the course of employment unless the employee concerned is—

- (a) reasonably obliged to disclose any such information in the course of duty;
- (b) authorised by the National Commissioner to make such disclosure; or
- (c) obliged by law or a court of law to do so.

(2) A Contractor or subcontractor must at the time of employment of an employee draw attention to this requirement.

(3) Any person who contravenes the provisions of subsection (1) or (2) is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding six months or both.

(Date of commencement of s. 111: 19 February, 1999.)

112. National Commissioner's powers in an emergency at public-private partnership correctional centres.—(a) If, in the opinion of the National Commissioner in consultation with the Minister—

- (i) the Director has lost, or is likely to lose, effective control of a public-private partnership correctional centre or any part of it; and
- (ii) it is necessary, in the interest of safety and security to take control of such correctional centre or part of it,

he or she may appoint a Temporary Manager to act as the head of that correctional centre and may replace custody officials with correctional officials to the extent necessary.

(b) The appointment referred to in paragraph (a) starts at the time specified in the Temporary Manager's written notice of appointment and ends on written notice to that effect.

(c) During the period of appointment referred to in paragraph (b)—

- (i) the Temporary Manager performs the functions of the Director; and
- (ii) the Contractor and any subcontractor, must do all that is possible to facilitate the performance by the Temporary Manager of those functions.

(d) As soon as practicable after making or terminating the appointment of a Temporary Manager, the National Commissioner must give notice of such action to the Contractor, the Director and the Controller.

(Date of commencement of s. 112: 19 February, 1999.)

CHAPTER XV OFFENCES

113. Interference with correctional or custody officials.—Any person who—

- (a) resists, hinders or obstructs a correctional or custody official in the performance of his or her duties;
- (b) in order to compel a correctional or custody official to do or not to do any act in the performance of his or her duties, or threatens or suggests the use of violence against, or restraint upon such person or any of his or her relatives or dependants, or threatens to damage the property of any such person or of the Department or the Contractor;
- (c) assists, conspires with, induces any correctional or custody official not to perform his or her duties or to do any act contrary to it;
- (d) participates, assists in or incites the commission of any act whereby any lawful order given to a correctional or custody official may be evaded; or

- (e) incites or induces an inmate to contravene a lawful rule, order, a regulation or a provision of this Act,

[Para. (e) substituted by s. 76 of Act No. 25 of 2008.]

is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding six years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 113: 19 February, 1999.)

114. Interference with community corrections conditions.—Any person who assists, conspires with or incites a person subject to community corrections to contravene a condition is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding five years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 114: 19 February, 1999.)

115. Aiding escapes.—Any person who—

- (a) conspires with or incites any inmate to escape;
- (b) assists an inmate in escaping or attempting to escape from any correctional centre or from any place where he or she may be in custody;
[Para. (b) amended by s. 77 of Act No. 25 of 2008.]
- (c) for the purpose of facilitating the escape of any inmate, supplies or agrees to supply or assists, incites or induces any other person to supply an inmate with any document, disguise or any other article;
[Para. (c) amended by s. 77 of Act No. 25 of 2008.]
- (d) without lawful authority relays any document, or article or causes it to be relayed into or out of a correctional centre or a place where offenders may be in custody; or
- (e) harbours or conceals or assists in harbouring or concealing an escaped offender,

is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding ten years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 115: 19 February, 1999.)

116. Unauthorised removal of inmate from correctional centre.—Any person who, without lawful authority, removes an inmate or allows him or her to leave the correctional centre, or place where such inmate is in custody, is guilty of an offence and liable on conviction to a fine, or in default of payment, to incarceration for a period not exceeding eight years or to incarceration without the option of a fine or both.

[S. 116 substituted by s. 78 of Act No. 25 of 2008.]

(Date of commencement of s. 116: 19 February, 1999.)

117. Escaping and absconding.—Any person who—

- (a) escapes from custody;
- (b) conspires with any person to procure his or her own escape or that of another offender or who assists or incites any offender to escape from custody;
- (c) is in possession of any document or article with intent to procure his or her own escape or that of another offender;

- (d) in any manner collaborates with a correctional or custody official or any other person, whether under the supervision of such correctional or custody official or person or not, to leave the correctional centre without lawful authority or under false pretences; or
- (e) is subject to community corrections and where he or she absconds and thereby avoids being monitored,

is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding ten years or to incarceration without the option of a fine or both.

[S. 117 amended by s. 39 of Act No. 32 of 2001 (English only).]

(Date of commencement of s. 117: 19 February, 1999.)

118. Giving or receiving money or other consideration.—(1) No correctional or custody official and no other person acting for or employed by him or her may directly or indirectly—

- (a) sell, supply or derive any benefit or advantage from the sale or supply of any article to or for the use of any offender or correctional centre; or
- (b) have an interest in any contract or agreement for the sale or supply of any such article.

(2) No correctional official may directly or indirectly—

- (a) have any pecuniary interest in the purchase of any supplies for the use of the Department or receive any discounts, gifts or other consideration from contractors for or sellers of such supplies;
- (b) except for the purposes of the execution of official duties, have any pecuniary dealing with an inmate or with any other person relating to an inmate; or

[Para. (b) substituted by s. 79 of Act No. 25 of 2008.]

- (c) on behalf of any offender, have any unauthorised communication with any person.

(3) Except for the payment of fines or for goods purchased in accordance with regulations made in terms of this Act, no money or other consideration shall, on any pretext whatsoever, be payable, paid, given or promised by or on behalf of any offender, either before, during or after serving a correctional centre sentence or being placed under community corrections to any correctional or custody official or other person in the service of the Department or in the employ of a Contractor.

(4) Except as envisaged in subsection (3), no correctional or custody official or other person in the service of the Department or in the employ of a Contractor may enter into any business transaction with a offender or pay, receive or demand any money or other consideration or undertake any service instead of receiving money or other consideration.

(5) Any person who contravenes any provision of this section is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding two years, or to such incarceration without the option of a fine, or both.

(Date of commencement of s. 118: 19 February, 1999.)

119. Supplying certain articles to offenders.—(1) No person may without lawful authority—

- (a) supply, convey or cause to be supplied or conveyed to any offender, or hide or place for his or her use any document, intoxicating liquor, dagga, drug, opiate, money, or any other article;
- (b) bring or introduce into any correctional centre, or place where offenders may be in custody, any document, intoxicating liquor, dagga, drug, opiate, money, or any other article to be sold or used in the correctional centre; or
- (c) bring out of any correctional centre, or convey from any offender any document or other article.

(2) No correctional or custody official or other person in the service of the Department or in the employ of a Contractor may without lawful authority allow or participate in the commission of any act prohibited in subsection (1).

(3) Any person who contravenes any provision of this section commits an offence and is liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding four years, or to such incarceration without the option of a fine or both.

(Date of commencement of s. 119: 19 February, 1999.)

120. Offenders receiving or sending articles.—Any inmate who directly or indirectly and without lawful authority—

- (a) gives or sends, or promises to give or send, any money or any other article to any correctional or custody official or any other person in the service of the Department or in the employ of a Contractor as a reward for any service rendered or to be rendered or on his or her behalf within or outside any correctional centre;
- (b) enters into any business transaction with any correctional or custody official or any other person in the service of the Department or in the employ of a Contractor;
- (c) receives, for own use or on behalf of any other offender or person any document, intoxicating liquor, dagga, drug, opiate, money or any other article;
- (d) arranges with any correctional or custody official or any other person for any document, intoxicating liquor, dagga, drug, opiate, money or any other article to be sent or conveyed into any correctional centre for a offender's own use or on his or her behalf; or
- (e) hands to any correctional or custody official or any other person any document or other article for the purpose of being hidden or placed by such person for eventual use by or delivery to a offender or other person,

is guilty of an offence and liable on conviction to a fine, or in default of payment, to incarceration for a period not exceeding four years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 120: 19 February, 1999.)

121. Selling or supplying articles to offenders.—(1) No correctional official or custody official and no person acting for or employed by him or her shall directly or indirectly—

- (a) sell or supply or receive, any benefit or advantage from the sale or supply of any article to or for the use of any offender or for the use of the Department;
- (b) have any interest in any contract or agreement for the sale or supply of any such article;

- (c) have any pecuniary interest in the purchase of any supplies for the use of the Department or receive any discounts, gifts or other consideration from contractors for or sellers of such supplies;
- (d) except for the purposes of the execution of his or her official duties, have any pecuniary dealing with a offender or, with regard to a offender, with any other person; or
- (e) on behalf of any offender, have any unauthorised communication with any person.

(2) Any person who contravenes any provision of this section shall be guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding one year, or to such incarceration without the option of a fine, or both such fine and such incarceration.

(Date of commencement of s. 121: 19 February, 1999.)

122. Unauthorised entry at correctional centres and communication or interference with offenders.—Any person who without lawful authority—

- (a) enters any correctional centre or fails to depart upon being ordered so to do by any correctional or custody official or member of the South African Police Service;
- (b) communicates with any inmate;
- (c) in any manner interferes with any offender or group of offenders; or
- (d) has in his or her possession or publishes a sketch, diagram or photograph of a correctional centre or part of a correctional centre or any security system relating to the detention of offenders in order to undermine the security or secure detention of the offenders,

is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding four years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 122: 19 February, 1999.)

123. Prohibited publication.—(1) No person may publish any account of correctional centre life or conditions that may identify a specific inmate unless the inmate concerned grants permission for such publication.

(2) (a) No person may without the permission of the National Commissioner publish any account of an offence for which an inmate or person subject to community corrections is serving a sentence.

[Para. (a) substituted by s. 80 (a) of Act No. 25 of 2008.]

(b) If, however, the information that is published forms part of the official court record the permission of the offender or the National Commissioner is not required.

(3) The National Commissioner may refuse such permission only if in his or her opinion the publication may undermine the objective of the implementation of the sentence of incarceration as specified in section 36 or the objectives of community corrections specified in section 50.

(4) (a) Any person who is not satisfied with the decision of the National Commissioner to grant or refuse permission in terms of subsections (2) and (3), may within 10 days after being informed of the decision refer the matter to the Minister.

(b) The Minister must confirm or set aside the decision.

[Sub-s. (4) substituted by s. 80 (b) of Act No. 25 of 2008.]

(5) No offender or person subject to community corrections may derive profit from, or receive any reward or remuneration directly or indirectly for, any published account of an offence for which a offender or person subject to community corrections is serving a sentence.

(6) Any offender or any other person who contravenes subsections (1), (2) or (5) is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding two years or to such incarceration without the option of a fine or to both such fine and such incarceration.

(7) A Court convicting an inmate or any other person of an offence in terms of this section may declare any reward or remuneration received by or on behalf of such inmate or person, forfeit to the State.

[Sub-s. (7) substituted by s. 80 (c) of Act No. 25 of 2008.]

(Date of commencement of s. 123: 19 February, 1999.)

124. Unauthorised wearing of departmental dress or insignia or prescribed sentenced offender dress.—Any unauthorised person who wears or uses—

(a) the departmental dress, distinctive badge or insignia of the Department or of a custody official; or

(b) the prescribed sentenced offender dress,

or anything deceptively resembling them is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding 18 months or to such incarceration without the option of a fine or both.

[S. 124 substituted by s. 81 of Act No. 25 of 2008.]

(Date of commencement of s. 124: 19 February, 1999.)

125. Masquerading as an official.—Any person masquerading as a correctional or custody official is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding two years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 125: 19 February, 1999.)

126. False representations.—Any person who obtains an appointment as a correctional official or as custody official by means of any false representation commits an offence and is liable on conviction to a fine, or in default of payment, to incarceration for a period not exceeding one year or to such incarceration without the option of a fine or both.

(Date of commencement of s. 126: 19 February, 1999.)

127. Unauthorised disclosure of information.—Any correctional or custody official or any person in the service of the Department or in the employ of the Contractor or a subcontractor who unlawfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure may prejudicially affect the exercise or the performance by the Department of its powers or functions under this Act, or that of a Contractor in terms of the contract, is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding two years or to such incarceration without the option of a fine or both.

(Date of commencement of s. 127: 19 February, 1999.)

128. Unauthorised access to or modification of computer material.—(1) For the purposes of this section—

- (a) **“access to a computer”** includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Department or a custody official;
- (b) **“contents of any computer”** includes the physical components of any computer as well as any program or data contained in or stored as envisaged in paragraph (a);
- (c) **“modifies”** includes a temporary or permanent modification;
- (d) **“perform a function on a computer”** includes copying or downloading; and
- (e) **“unauthorised access”** includes access by a person who is authorised to use the computer but unauthorised to gain access to a certain program or to certain data held in such computer or who is at the relevant time temporarily unauthorised to gain access to such computer, program or data.

(2) Any person who intentionally gains unauthorised access to any computer or to any program or data held in such a computer belonging to or under the control of the Department or Contractor, or in a computer to which correctional or custody officials have access in that capacity, is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding two years or to such incarceration without the option of a fine or both.

(3) Any unauthorised person who performs a function on a computer belonging to or under the control of the Department or a Contractor or to which correctional or custody officials have access, is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding two years, or to such incarceration without the option of a fine or both.

(4) Any person who intentionally modifies the contents of any computer belonging to or under the control of the Department or a Contractor or to which only correctional or custody officials have access in order to impair the operation of any computer or its operating or the reliability of data held in it or to prevent or hinder access to any program or data held in any computer, is guilty of an offence and liable on conviction to a fine or, in default of payment, to incarceration for a period not exceeding five years or to such incarceration without the option of a fine, or both.

(5) The courts of the Republic of South Africa have jurisdiction to try any person under this section whether such an offence was committed outside the Republic if—

- (a) the accused was in the Republic;
- (b) the computer concerned was in the Republic; or
- (c) the accused was a South African citizen.

(Date of commencement of s. 128: 19 February, 1999.)

128A. Falsifying identification.—A remand detainee who intimidates or conspires with another remand detainee to exchange identities or to defeat the ends of justice, is guilty of an offence and liable on conviction to a fine or to incarceration for a period not exceeding 10 years or to such incarceration without the option of a fine or to both a fine and such incarceration.

[S. 128A inserted by s. 16 of Act No. 5 of 2011.]

129. Indirect complicity.—Without derogating from any specific provisions in this regard any person who assists, conspires with or incites another to contravene any provision of this Chapter, commits an offence and is liable on conviction to the punishment stipulated in such provision.

(Date of commencement of s. 129: 19 February, 1999.)

CHAPTER XVI GENERAL

130.

[S. 130 repealed by s. 2 (1) of Act No. 40 of 2002.]

131. Liability for patrimonial loss arising from performance of service by persons under community corrections.—In the event of a person serving community corrections being liable in delict for an act or omission in the course of such service, the damages sustained may be recovered from the State.

132. Establishment, management and exemption from certain moneys of canteens at correctional centres.—(1) The National Commissioner may approve the establishment of canteens for the exclusive use or benefit of correctional officials, the families of such officials and other persons or categories of persons prescribed by regulation, to be conducted on such conditions and in such manner as may be prescribed by regulation, which must include conditions as to the liquidation and distribution of assets on the termination of the business of such canteen.

[Sub-s. (1) substituted by s. 40 of Act No. 32 of 2001.]

(2) No licence fees or fee, leviable by law, is payable by any person under any law or by-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 authorised by him or her to sign any such document and indicating that he or she 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 “**canteen**” includes—

- (a) any mess for officials of the Department or any institution of the Department or any premises temporarily or permanently used for providing recreation, refreshment or necessaries for the exclusive use or benefit of officials of the Department, the families of such officials and other persons or categories of persons prescribed by regulation;
- (b) any canteen which before the date of commencement of this Act was certified by the Minister or any person authorised by him or her 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).

133. Agreements for articles, supplies and services.—(1) All State departments must, as far as practicable, purchase articles and supplies manufactured by sentenced offender labour from the Department at fair and reasonable prices as may be determined by the Minister of Finance.

[Sub-s. (1) substituted by s. 82 of Act No. 25 of 2008.]

(2) The National Commissioner may authorise specific services necessary or expedient and in the public interest or in the interest of any deserving charity to be rendered gratuitously.

134. Regulations.—(1) The Minister may make regulations not inconsistent with this Act as to—

- (a) the safe custody of inmates and the maintenance of good order, discipline and security in correctional centres;
- (b) the provisions of a register and the procedure for recording in it information regarding a inmate's identification, date and hour of admission and release, the authority for doing so, and the inmate's personal and criminal record;
- (c) the procedure to be followed on admission for the medical examination of a inmate;
- (d) the assessment of a sentenced offender;
- (e) the receipt and safe custody of money or other articles belonging to a inmate by correctional officials at correctional centres and the disposal of such possessions should a inmate escape, die or fail to claim them;
[Para. (e) substituted by s. 41 (a) of Act No. 32 of 2001.]
- (f) accommodating inmates in cells in respect of floor space, cubic capacity, lighting, ventilation, sanitary installations and general health conditions;
- (g) the classification of categories of inmates based upon age, gender, health and security risk considerations;
- (h) the location, transfer, temporary leave, placement and release of inmates;
- (i) the diet of inmates with special provision for the nutritional requirements of children, pregnant women and any other category of inmates whose physical condition requires a prescribed diet;
- (j) the clothing and bedding to be supplied to and worn by inmates;
- (k) the standards of hygiene to be maintained by inmates in reference to their daily exercise and health care;
- (l) visits to correctional centres by relatives of inmates and others and arrangements for an inmate to consult with a legal practitioner;
- (m) providing money, food, clothing, a travelling allowance or method of transport for sentenced offenders prior to their placement for release;
[Para. (m) substituted by s. 83 (a) of Act No. 25 of 2008.]
- (n) the procedure to be followed on the death of a inmate;
- (o) informing the next of kin of death of an inmate and the conveyance and disposal of the body;
- (oA) the manner in which any publication, video or audio material, film or computer program may be drawn from a library in the correctional centre, sent to an inmate from outside the correctional centre or be used by a inmate;
[Para. (oA) inserted by s. 41 (b) of Act No. 32 of 2001.]
- (oB) the conditions subject to which a female inmate may be permitted to have her child with her;
[Para. (oB) inserted by s. 41 (b) of Act No. 32 of 2001.]
- (p) financial and other support of institutions, social agencies and individuals promoting the social responsibility and human development of sentenced offenders or persons under community corrections, including the establishment of one or more funds to support these objects;

[Para. (p) substituted by s. 41 (c) of Act No. 32 of 2001.]

- (q) the admission to a correctional centre of any person;
[Para. (q) substituted by s. 41 (d) of Act No. 32 of 2001.]
- (r) the manner in which a inmate may make requests and complaints, and how they are to be dealt with by correctional officials or custody officials;
- (s) conducting disciplinary proceedings against a inmate and the implementation and enforcement of any penalty imposed;
- (t) the procedure to be followed by a sentenced offender in exercising a right of appeal, review or pardon or in making any or further representations or submissions;
- (u) those amenities susceptible to restriction as a penalty for disciplinary infringements and the amenities allowed to unsentenced offenders;
- (v) the searching of persons upon entering or when inside a correctional centre;
- (w) the examination, confiscation and disposal of any document or other article found in any correctional centre;
- (x) the permissible mechanical restraints and the manner in which they may be used;
- (y) the permissible non-lethal incapacitating devices and the manner in which they may be used;
- (z) the use of weapons other than firearms and non-lethal incapacitating devices, the recording of such use and the training in their use;
[Para. (z) substituted by s. 41 (e) of Act No. 32 of 2001.]
- (aa) the reporting procedures when force, including the use of a firearm, is used;
[Para. (aa) substituted by s. 41 (f) of Act No. 32 of 2001.]
- (bb) providing and equipping workshops and other facilities for the training of and the use by sentenced offenders and the supply of material for that purpose;
- (cc) the working hours, gratuity and conditions relating to work done by sentenced offenders;
- (dd) the composition, terms of office of members and procedures for the conducting of meetings of Case Management Committees;
[Para. (dd) substituted by s. 41 (g) of Act No. 32 of 2001.]
- (ee) the entering into contracts for labour or services of sentenced offenders or the products of their labour or services;
- (ff) the obtaining and recording of information relating to persons subject to community corrections;
- (gg) the composition and supervision of a community corrections office;
- (hh) the appointment and conditions of service, including the disciplinary code and procedures, of correctional officials and voluntary workers, excluding officials of the Senior Management Service as defined in the Regulations issued in terms of the Public Service Act, and all personnel matters pertaining to them;
[Para. (hh) substituted by s. 83 (b) of Act No. 25 of 2008.]

- (ii) the management and control of the medical scheme established under section 94 (1) (*b*)*bis* of the Correctional Services Act, 1959 (Act No. 8 of 1959), to provide for medical treatment of correctional officials and other persons entitled thereto, membership of the scheme, membership contributions, rights, privileges and obligations of members, the vesting of assets, rights, liabilities and obligations of the scheme, the disposal of the assets of the fund and generally all matters reasonably necessary for the proper functioning of the scheme;
[Para. (ii) substituted by s. 41 (*h*) of Act No. 32 of 2001.]
- (jj) the management and control of the private fund established under section 94 (1) (*b*)*ter* of the Correctional Services Act, 1959 (Act No. 8 of 1959), for the purposes of developing and supporting correctional officials or other persons financially or otherwise, the payment of voluntary contributions to the fund, the utilisation of money from the fund in the advancement of its purpose, and generally all matters reasonably necessary for the proper functioning of the fund;
[Para. (jj) substituted by s. 41 (*i*) of Act No. 32 of 2001.]
- (kk) the powers, duties and functions of correctional officials, temporary correctional officials, unpaid voluntary workers, Directors of public-private partnership correctional centres and custody officials and, in general, the operation of a correctional centre; and
- (kkA) the detention of a offender in order to search him or her or for the recovery, by normal excretion, of objects swallowed, and the manner in which such searches must be conducted;
[Para. (kkA) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (kkB) types of mechanical restraints which may be used on offenders, their application and the reporting procedure on their application;
[Para. (kkB) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (kkC) the use of electronic and other monitoring devices and the procedures for their application;
[Para. (kkC) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (kkD) the procedures for the detention of a offender sentenced to periodical incarceration;
[Para. (kkD) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (kkE) the establishment, management and use of canteens and the liquidation and distribution of assets on the termination of their business;
[Para. (kkE) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (kkF) the management and use of canteens established under section 88 of the Correctional Services Act, 1959 (Act No. 8 of 1959), and the liquidation and distribution of assets on the termination of their business;
[Para. (kkF) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (kkG) the management and membership of clubs established in terms of regulation 7A promulgated under the Correctional Services Act, 1959 (Act No. 8 of 1959), and the establishment and membership of new clubs;
[Para. (kkG) inserted by s. 41 (*j*) of Act No. 32 of 2001.]

- (*kkH*) the proper performance of its functions by the unit contemplated in section 95 (3A) when acting in terms of subsections (2) (*f*) and (*g*) and (3) of that section;
[Para. (*kkH*) inserted by s. 41 (*j*) of Act No. 32 of 2001.]
- (*kkI*) the information and data to be kept relating to the incarceration of a remand detainee;
[Para. (*kkI*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkJ*) the safe custody of remand detainees and the maintenance of good order, discipline and security in remand detention facilities;
[Para. (*kkJ*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkK*) the obtaining, safekeeping and retaining of information relating to the incarceration of a remand detainee;
[Para. (*kkK*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkL*) the location, transfer, placement and release of remand detainees;
[Para. (*kkL*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkM*) the manner in which a remand detainee may make requests or complaints, and how they are to be dealt with by correctional officials or remand detention officials, as the case may be;
[Para. (*kkM*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkN*) the diet of a pregnant remand detainee, a child in custody with a remand detainee and an aged remand detainee;
[Para. (*kkN*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkO*) accommodation of remand detainees who are pregnant, aged, mentally ill or mothers with newborn children;
[Para. (*kkO*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkP*) the conditions subject to which a remand detainee may be permitted to have her child with her;
[Para. (*kkP*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkQ*) the clothing to be supplied to, and worn by, remand detainees;
[Para. (*kkQ*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkR*) visits to remand detention facilities by relatives and others of aged or mentally ill remand detainees;
[Para. (*kkR*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkS*) visits to remand detention facilities by relatives and others of remand detainees and arrangements for a remand detainee to consult with a legal practitioner;
[Para. (*kkS*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkT*) the provision of food and drink to remand detainees by their visitors;
[Para. (*kkT*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkU*) the admission to a remand detention facility of any person;
[Para. (*kkU*) inserted by s. 17 of Act No. 5 of 2011.]
- (*kkV*) those amenities susceptible to restriction as a penalty for disciplinary infringements and the amenities allowed to remand detainees;

[Para. (kkV) inserted by s. 17 of Act No. 5 of 2011.]

(kkW) the treatment of mentally ill or aged remand detainees;

[Para. (kkW) inserted by s. 17 of Act No. 5 of 2011.]

(kkX) the conditions and procedures to be followed where an application is lodged in terms of section 49E;

[Para. (kkX) inserted by s. 17 of Act No. 5 of 2011.]

(kkY) the conditions and procedures to be followed where a remand detainee is surrendered to the South African Police Service for investigation purposes;

[Para. (kkY) inserted by s. 17 of Act No. 5 of 2011.]

(kkZ) the conditions and procedures to be followed where a referral is made in terms of section 49G; and

[Para. (kkZ) inserted by s. 17 of Act No. 5 of 2011.]

(kkZA) the composition of the medical parole advisory board;

[Para. (kkZA) inserted by s. 17 of Act No. 5 of 2011.]

(ll) generally, all matters, the prescription of which is necessary or expedient for attaining the purpose of this Act, or which must or may be prescribed by regulation in terms of this Act.

[Para. (ll) substituted by s. 41 (k) of Act No. 32 of 2001.]

(2) The National Commissioner may issue orders, not inconsistent with this Act and the regulations made thereunder, which must be obeyed by all correctional officials and other persons to whom such orders apply, as to—

(a) the conditions for and circumstances under which payment to a inmate, or the taking into safe-keeping, release or disposal of money, valuables or other articles belonging to a inmate, may take place;

(b) the bathing or showering of inmates;

(c) hygienic requirements of bedding;

(d) the provision of special diet;

(e) the provision of clothing and bedding on admission;

(f) the wearing of attire for religious or cultural purposes;

(g) access to the services of a medical practitioner of the offender's choice;

(h) the supply at State expenses of medical assistance devices not including surgical implants;

(i) reports on problems concerning environmental health conditions and health-related issues;

(j) the manner in which the Head of the Correctional Centre must allow a inmate to notify his or her spouse, partner or next-of-kin when the inmate is transferred;

(k) recreational activities to be provided for the benefit of the mental and physical health of inmates;

(l) the establishment and maintenance of libraries;

(m) the recording of identification particulars of an inmate;

[Para. (m) substituted by s. 83 (c) of Act No. 25 of 2008.]

- (n) the taking of the fingerprints and photographs of an inmate for identification purposes;
[Para. (n) substituted by s. 83 (c) of Act No. 25 of 2008.]
- (o) the manner in which mechanical restraints are to be applied;
- (p) the reporting of incidents and actions taken where non-lethal incapacitating devices were used;
- (q) the handling of firearms;
- (r) the reporting of firearm use;
- (s) general safety measures for handling firearms;
- (t) the types of weapons other than non-lethal incapacitating devices and firearms to be used by correctional officials;
- (u) the use of batons;
- (v) the procedures for the use of pyrotechnical equipment;
- (w) amenities to be made available to inmates;
- (x) work which may be performed by a sentenced offender on Sundays or other days of rest and gratuity for such work;
- (y) a discharge report of a inmate under medical treatment;
- (z) the restrictions on amenities for unsentenced offenders;
- (aa) the appointment of correctional officials on probation;
- (bb) health and security requirements of an applicant for appointment in the Department;
- (cc) the written contract of employment to be provided to every correctional official upon appointment;
- (dd) the conditions under which a correctional official may do remunerative work outside the Department;
- (ee) the conditions for the issuing, wearing and maintenance of articles of departmental dress and equipment;
[Para. (ee) substituted by s. 83 (d) of Act No. 25 of 2008.]
- (ff) the termination of service of correctional officials;
- (gg) the conditions under which a correctional official may resign from the Department;
- (hh)
[Para. (hh) deleted by s. 83 (e) of Act No. 25 of 2008.]
- (ii) categories of leave and deviations from leave conditions;
- (jj) the payment of subsistence allowances and the deviations from qualifying conditions;
- (kk) the conveyance at State expense of the personal and household effects of a correctional official who is transferred;
- (ll) the powers, functions and duties of the Board of Trustees of the Facilities Fund;
- (mm) the constitution and performance of functions of a committee to control a departmental canteen;
- (nn) the obtaining of information of statistical value and research;

- (oo) the conditions under which the Head of the Correctional Centre must allow certain persons access to the correctional centre;
- (pp) generally, all matters necessary or expedient for the application of this Act or the regulations.

[Sub-s. (2) substituted by s. 41 (l) of Act No. 32 of 2001.]

(3) A regulation may provide penalties for its contravention or failure to comply with it and other penalties in the case of any subsequent contravention or non-compliance. Such penalties may consist of a fine or incarceration for a period not exceeding six months, or such incarceration without the option of a fine, or both such fine and such incarceration.

(4) If the Minister considers that a regulation is not suited to the circumstances of a particular correctional centre or community corrections office he or she may modify its application to such correctional centre or community corrections office.

(5) The Minister must refer proposed regulations to the relevant Parliamentary Committees in both Houses dealing with the Department.

(Date of commencement of s. 134: 19 February, 1999.)

135. State bound by Act.—This Act binds the State.

(Date of commencement of s. 135: 19 February, 1999.)

136. Transitional provisions.—(1) Any person serving a sentence of incarceration immediately before the commencement of Chapters IV, VI and VII is subject to the provisions of the Correctional Services Act, 1959 (Act No. 8 of 1959), relating to his or her placement under community corrections, and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those Chapters.

(2) When considering the release and placement of a sentenced offender who is serving a determinate sentence of incarceration as contemplated in subsection (1), such sentenced offender must be allocated the maximum number of credits in terms of section 22A of the Correctional Services Act, 1959 (Act No. 8 of 1959).

(3) (a) Any sentenced offender serving a sentence of life incarceration immediately before the commencement of Chapters IV, VI and VII is entitled to be considered for day parole and parole after he or she has served 20 years of the sentence.

(b) The case of a offender contemplated in paragraph (a) must be submitted to the National Council which must make a recommendation to the Minister regarding the placement of the offender under day parole or parole.

(c) If the recommendation of the National Council is favourable, the Minister may order that the offender be placed under day parole or parole, as the case may be.

(4) If a person is sentenced to life incarceration after the commencement of Chapters IV, VI and VII while serving a life sentence imposed prior to the commencement, the matter must be referred to the Minister who must, in consultation with the National Council, consider him or her for placement under day parole or parole.

[S. 136 substituted by s. 42 of Act No. 32 of 2001. Sub-s. (4) substituted by s. 84 of Act No. 25 of 2008.]

(Date of commencement of s. 136: 19 February, 1999.)

137. Repeal of laws.—The Acts set out in the Schedule are hereby repealed or amended to the extent set out in the third column of the Schedule.

(Date of commencement of s. 137: 1 October, 2004 (only with reference to the amendment of the Criminal Procedure Act, No. 51 of 1977).)

138. Short title and commencement.—(1) This Act is called the Correctional Services Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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

(3) Different dates may be fixed by the President by proclamation in the *Gazette* for the repeal of different provisions of the Correctional Services Act, 1959 (Act No. 8 of 1959).

(Date of commencement of s. 138: 19 February, 1999.)

COMMENCEMENT OF THIS ACT

<i>Date of commencement</i>	<i>The whole Act/ Sections</i>	<i>Proclamation No.</i>	<i>Government Gazette</i>	<i>Date of Government Gazette</i>
19 February, 1999	Ss 1, 83-95, 97, 103-130, 134-136 and 138	R.20	19778	19 February, 1999
31 July, 2004	Ss. 2, 4, 6-49, 96, 98, 99-102, 131-133	R.38	26626	30 July, 2004
1 October, 2004	Ss. 50-82 and s. 137 (with reference to the amendment of Act No. 51 of 1977 only)	R.38	26626	30 July, 2004
1 March, 2012	The whole Act, except ss. 49E and 49G	R.13	35093	1 March, 2012

Schedule

LAWS AMENDED BY SECTION 137

[Heading substituted by s. 43 of Act No. 32 of 2001.]

<i>No. and year of law</i>	<i>Short title</i>	<i>Extent of repeal or amendment</i>
Act 8 of 1959	Correctional Services Act, 1959	The repeal of the whole.
Act 51 of 1977	Criminal Procedure Act, 1977	1. Amends s. 1 by substituting the definition of "Commissioner".
		2. Amends s. 1 by substituting the definition of "Correctional Official".
		3. Amends s. 1 by substituting the definition of "correctional supervision".