

Office of the Chairperson

Portfolio Committee on Health and Social Development

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NEGOTIATING MANDATE

To : The Chairperson: Portfolio Committee on Health and Social Development

Name of the Bill : Children's Second Amendment Bill

Number of the Bill : [B14B - 2015]

Date of Deliberation : 17 November 2016

Vote of the Legislature :

The Portfolio Committee on Health and Social Development (the Committee) supports the Children's Second Amendment Bill [B14B-2015], and confers on the permanent delegate representing the Province of Mpumalanga in the National Council of Provinces, the mandate to vote in favour of the Bill without any proposed amendments.

HON P NGOBENI (MPL)

CHAIRPERSON: PORTFOLIO COMMITTEE ON
HEALTH AND SOCIAL DEVELOPMENT

DATE

REPORT OF THE PORTFOLIO COMMITTEE ON HEALTH AND SOCIAL DEVELOPMENT ON CHILDREN'S SECOND AMENDMENT BILL, [B14B-2015]

1. INTRODUCTION

The Speaker referred the Children's Second Amendment Bill, [B14B-2015] (the Bill) to the Portfolio Committee on Health and Social Development (the Committee) for consideration and report back to the House in accordance with the legal prescripts and the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of section 118(1) of the Constitution of the Republic of South Africa 1996, the Legislature has a mandate to facilitate public involvement in the legislative and other processes of the legislature and its committees. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The purpose of the Bill is to;

- a. to amend the Children's Act, 2005, so as to extend a definition;
- b. to insert new definitions;
- c. to provide that the removal of a child to temporary safe care without a court order be placed before the children's court for review before the expiry of the next court day;
- d. to provide for the review of a decision to remove a child without a court order;
- e. to provide for the provincial head of social development to transfer a child or a person from one form of alternative care to another form of alternative care;
- f. to provide that an application for a child to remain in alternative care beyond the age of 18 years, must be submitted before the end of the year in which the relevant child reaches the age of 18 years;

- g. to give effect to Section 28 of the Constitution wherein the child's best interests are of paramount importance, and
- h. to provide for matters connected therewith.

3. METHOD OF WORK

The Committee was briefed by the National Council of Provinces (NCOP) permanent delegate, Hon LC Dlamini who was accompanied by a representative from the National Department of Social Development on 4 November 2016. The Mpumalanga Department of Social Development also attended the briefing.

The Committee then conducted public hearings in order to solicit inputs/comments from members of the public. The Bill was published in the following newspaper publications: Mpumalanga News in Ehlanzeni District, Middleburg Observer in Nkangala District and Khanyisa Weekly Newspaper in Gert Sibande District.

The Public hearings were conducted on Friday, 11 November 2016, from 10h00 – 13h00 in the following Districts:

DISTRICT	VENUE	No. of Attendees
Ehlanzeni	Ka-Mashego Community Hall – Mbombela Local Municipality	198
Nkangala	Adelaide Tambo Community Hall (Ext. 7 Mhluzi) – Steve Tshwete Local Municipality	148
Gert Sibande	Ella De Bruin Community Hall (Ermelo) – Msukaligwa Local Municipality	130

The Committee thereafter met on 18 November 2016 to consider the draft report and the negotiating mandate on the Bill and such mandate was duly submitted to the NCOP.

4. INTERACTION BY THE COMMITTEE WITH NCOP PERMANENT DELEGATE AND DEPARTMENT OF SOCIAL DEVELOPMENT ON THE BILL

The permanent delegate gave a political overview on the Bill and the National Department of Social Development's (the department) representative made a presentation on the Bill. The Committee thereafter made comments and asked clarity seeking questions:

Hon LC Dlamini gave an overview of the Children's Amendment Bill and the Children's Second Amendment Bill:

Children's Act No. 38 of 2005

She indicated that the Children's Act governs all the laws relating to the care and protection of children, defines the responsibilities and rights of parents, makes provision for the establishment of Children's Courts and the appointment of welfare officers, regulates the establishment of places of safety, orphanages and the rights of orphans and sets out the laws for their adoption, also provides for the contribution of certain people towards maintenance. In most cases, she reported that the guiding principle is the best interests of the child.

Hon Dlamini reported that apart from the parents of a child, only maternity homes, hospitals, places of safety and children's homes are allowed to receive and care for a child for a period longer than 14 days (unless they have legal consent from the Child Commissioner of a district). Even if a person thinks that it is in the child's best interest to remove him or her from the parents, there are still legal procedures to

follow. The Child Care Act allows for the removal of a child from the custody of parents by a policeman, social worker or person officially authorized by a Children's Court or the Minister of Welfare, if they believe that the child is in need of care. The child is taken to a place of safety, and must then be taken to the Children's Court as soon as possible to determine if he or she is need of care. The parents or guardian of the child must be informed of the court investigation that will take place.

Hon Dlamini also reported that on 11 January 2012 the Constitutional Court gave a judgment in a case that necessitated it to resolve whether certain requirements of the Children's Act No. 38 of 2005 (the Act) that authorise the removal of children in certain circumstances are consistent with the Constitution. The Constitutional Court had to decide if the High Court declaration should be confirmed. The concerns were the declaration of the constitutional invalidity of sections 151 and 152 (section 151 provides for removal by court order, while section 152 provides for removal without a court order in certain circumstances) of the Children's Act. The North Gauteng High Court (Pretoria) declared these sections unconstitutional to the extent that that they provide for a child to be removed from family care by state officials and placed in temporary safe care, but do not provide for the child to be brought before the Children's Court for automatic review of that removal. Hence the introduction of the Children's Amendment Bill and the Children's Second Amendment Bill.

Children's Amendment Bill and the Children's Second Amendment Bill

She further reported that Parliament is currently considering amendments to the Children's Act in two Bills: the Children's Amendment Bill and the Children's Second Amendment Bill. On 20th September 2016, the Select Committee on Social Services received a briefing from the Department of Social Development on the proposed amendments to the Children's Amendment Bill [B13-2015] and the Children's Second Amendment Bill [B14-2015]. The proposed amendments were the result of over six years of work, inclusive of guidance given from the courts regarding the interpretations and misinterpretations of the clauses. There were a total of seven clauses with proposed amendments to the Children's Amendment Bill, and a total of five clauses with proposed amendments to the Children's Second Amendment Bill.

Hon Dlamini reported that a major change to the Children's Amendment Bill was a deeming provision that would mark a person's suitability to work with children. Once someone was found guilty of an offence against children, that person would automatically be deemed as unsuitable to work with children, and such a person's name would be included on a register. The register was retrospective, in that if such an offence had been committed against a child within the five years preceding the enactment of the amendment, the offender's name would still be recorded. This was done without a separate application to review the suitability to work with children once the accused was found guilty of an offence against a child, as was currently done. However, the Constitutional Court had reportedly advised the Department of Social Development (DSD) that it was unconstitutional to penalise children in the same manner as adults. Hence, if the person who had committed the offence against a child had been a minor him/herself at the time of the offence, he/she could apply for the removal of his/her name from the register of offenders against children.

She reported that a major change to the Children's Second Amendment Bill was the empowering of the head of social development to allow persons in foster or adoptive care to remain in such care beyond the age of 18, up until 21 years, should the person still be in the schooling or training system, whichever came first. Members of the Select Committee queried the relevance of the age limitation to those of poorer backgrounds, because destitute persons were unlikely to have begun school at a young age, and so may need to remain in foster care for a while longer, even if it was in alternative care. Another change concerned the removal of a child without a court order (section 152). The amendment introduces strict timeframes for bringing these cases to court. Clause 1 of the Second Amendment Bill introduces a new function for state social workers. They will be allowed to provide adoption services if they have a specialty in adoptions.

Issues raised by the Select Committee on Social Services

Hon Dlamini reported that an emphasized concern was the unprecedented workload for state social workers and their preparedness, and even more so, the shortage of social workers nationally. The National Contractor Development Programme (NCDP) had mandated 57 000 social workers for South Africa, but nationally there were approximately only 13000 to 14000 who were employed. She indicated that the DSD was asked by the Committee how it would resolve the shortage, and which measures would be taken to recruit graduates of social work studies who had been sponsored with bursaries by the DSD. The Committee reportedly suggested that the awarding of new bursaries should cease for a period of time, and that those allocated funds should be used for the recruitment of those sponsored graduates so that employment could be guaranteed, since there were currently no funds specifically allocated for the absorption of those trained. Only after this period was over should the DSD continue awarding new bursaries, as it was senseless to perpetuate training with no strategy to employ the recipients when they graduate.

The following were noted:

- a. The definition of adoption social worker is extended to include social workers in the employ of the state;
- b. When a child is placed in a protective home, the case must be reported within 24 hours to the social worker (Head of the Department of Social Development) and the magistrate court; for judicial review, recommendations and follow-ups (where necessary);
- c. Placement of the children in the protective homes should include clear specifications on the needs of the child;
- d. Children over 18 years still in school will continue receiving the child grant until the completion of grade 12, higher education, learnership and training.
- e. The Bill has costs implications as the department indicated that there was no sufficient budget to recruit social workers in order to ensure effective

implementation and execution of the adoptive function by the social workers employed by the state.

- f. The department indicated that there is a need to implement a clear working strategy to ensure that there is a balance between students sponsored by the department to study social work and recruitment of such graduates upon completion of their social work degree, as currently there is a high rate of unemployed graduates which the national and the provincial departments are unable to recruit due to budget constraints.

5. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL

The following stakeholders were invited by the Committee to attend the public hearings held on 11 November 2016;

- a. Community Members
- b. Department of Social Development
- c. Mpumalanga House of Traditional Leaders (HTL)
- d. South African Local Government Association (SALGA)
- e. Public Service Commission (PSC)
- f. South African Human Rights Commission
- g. Commission for Gender Equality
- h. National Prosecuting Authority
- i. Mpumalanga Child Line
- j. Greater Rape intervention Programme (GRIP)
- k. Mpumalanga Justice Cluster
- l. Legal Aid
- m. FAMSA (Family and Marriage Association of South Africa)
- n. Office of the Family Advocate
- o. Executive Mayors of District Municipalities
- p. Ward Committees

- q. Community Development Workers
- r. Non-governmental organizations

During the public hearings, members of the Committee explained the Bill in the local languages spoken in the three listed districts.

The stakeholders who were present at the public hearings generally supported the Bill. The following inputs were noted:

- a. The Department of Social Development assisted by the Department of Home Affairs must engage and develop clear and specific regulations on how to address the following cases :
 - i. Birth certificates and identity documents for children born by a South African mother and a father who is a foreign national;
 - ii. Interventions for foreign national children abandoned in public places;
- b. The Bill must include a clause on how to address cases of abuse of children with disabilities within communities, particularly in the protective homes – Children and Youth Care Centres (CYCC);

The following concerns were raised by the community in relation to the Bill:

- a. How the Bill will assist slow learners who fail continuously until they are over the age of 18 and cannot remain in the mainstream schooling system;
- b. Assistance for children who need to study at tertiary level –the application process, scope of cover for tertiary studies and costs involved;
- c. Monitoring of the social workers - particularly on fairness in cases that need objectivity in order for grants to be approved or terminated;
- d. Monitoring of the protective homes for compliance with the Children Act and other relevant legislation;

The Commission for Gender Equality (provincial) made proposals for amendments in order for the Bill to be gender sensitive which proposed amendments were considered by the Committee.

6. OBSERVATIONS AND FINDINGS BY THE COMMITTEE

The Committee considered all submissions made by members of the public and state institutions which proposed amendments, and such proposed amendments were accordingly considered and deliberated upon.

The Committee made the following observations and findings regarding the Bill:

a. Views of the public on the Bill

Generally, members of the public were in support of the Bill.

b. Implementation on the Bill

Once the Bill is passed into law, the Department will engage with provinces. Circulars will also be distributed to provinces and stakeholders in order to raise awareness on the new legislation.

c. Constitutional Implications

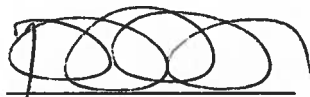
The Bill is consistent with the Constitution and is particularly in line with Section 28 wherein the best interest of the children are of paramount importance.

7. RECOMMENDATIONS

The Portfolio Committee on Health and Social Development after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to vote in favour of the Bill without any proposed amendments.

8. CONCLUSION

The Chairperson wishes to thank all members of the public for their worthwhile participation in the public hearings and for the inputs and comments they have made. A word of gratitude to the NCOP permanent delegate, Hon Dlamini, both the National and Provincial Department of Social Development, Members of the Portfolio Committee on Health and Social Development for their efforts in ensuring that the Committee meets its obligation and the support staff who contributed to the success of the public hearings and the production of this report.



HON P NGOBENI

**CHAIRPERSON: PORTFOLIO COMMITTEE
ON HEALTH AND SOCIAL DEVELOPMENT**

17/11/2016
DATE