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**10 May 2017**

**DECLARATION: Report of Portfolio Committee on Justice and Correctional Services on the Criminal Procedure Amendment bill [b2 – 2017], dated 9 may 2017**

1. The Bill seeks to amend section 77, 78 and 79 of the Criminal Procedure Act 51 of 1977:
2. The Bill emanates, among others, from the judgment of the Constitutional Court in *De Vos N.O. and Others v Minister of Justice and Constitutional Development and Others* [2015] ZACC 21, also known as the “De Vos” judgment.
3. The Bill also seeks to clarify the composition of panels provided for in section 79 of the Criminal Procedure Act, 1977, following the Western Cape High Court judgement of S v Pedro [2014] JOL 32061 (WCC).
4. In the *De Vos* case, the Constitutional Court declared section 77(6)(a)(i) and (ii) of the Criminal Procedure Act 51 of 1977 to be inconsistent with the Constitution and invalid to the extent that it provided for the compulsory imprisonment of an adult accused person; and compulsory hospitalisation or imprisonment of children.
5. In the case of section 77(6)(i) of the Criminal Procedure Act, 1977, the Court suspended the declaration of invalidity for a period of 24 months to allow Parliament to correct the defects in light of the judgement, which was delivered on 25 June 2015. The deadline is, therefore, 25 June 2017.
6. Regarding section 77(6)(a)(ii), the Constitutional Court provided for a read-in provision.
7. The Bill, therefore, largely seeks to ensure that the Constitutional Court judgement is complied with by amending the applicable provisions of the Criminal Procedure Act, 1977, to remedy the current position of constitutional invalidity.
8. The proposed amendments, therefore, seek to provide the courts with a wider range of options in respect of orders to be issued where the court finds that an accused person is:
* (i) not able to understand the proceedings so as to make a proper defence by reason of mental illness or intellectual disability or
* (ii) is found to be not criminally responsible for the act by reason of mental illness or intellectual disability.
1. As mentioned previously, the Bill also seeks to clarify the composition of panels provided for in section 79 of the Criminal Procedure Act, 1977, following the Western Cape High Court judgement of S v Pedro [2014] JOL 32061 (WCC). In this case the composition of these panels came under scrutiny.
2. Further, the Bill proposes to replace the outdated term “mental” defect with that of “intellectual disability” wherever it appears in the Act.
3. The Bill was referred to the Committee on 1 February 2017. The Committee invited public comment on its contents and received two written submissions. There were no requests to appear before the Committee.
4. **Summary of Contents**

Clauses 1 and 2 of the Bill aim to give effect to the De Vos judgement:

* 1. Clause 1 amends section 77(6) of the Criminal Procedure Act, 1977 by providing the court with a range of orders that it may issue where an accused person is found unable to understand the proceedings so as to make a defence.
	2. Clause 1(b) amends section 77(6)(i) of the Criminal Procedure Act, 1977, to provide the court with a discretion to order that an accused person, who is found not capable of understanding the proceedings, in a case where the charge is one of murder or culpable homicide or another offence involving serious violence, be detained in a psychiatric prison or temporarily in a correctional health facility of a prison where there is no bed in a psychiatric hospital if the court is of the opinion that the it is necessary to do so on the grounds that the accused poses a serious danger to himself or herself or to others, pending a decision of a court in chambers in terms of the Mental Health Care Act, 2002.
	3. The Court may also order that the person concerned be admitted and detained on an involuntary basis to a designated health establishment in terms of the Mental Health Care Act, 2002; or be released subject to conditions.
	4. There is a proposed new paragraph (ee) that that is aimed at highlighting the position of a child in need of care and protection by providing for that the child may be referred to a children’s court.
	5. The proposed amendment to section 77(6)(ii) is line with the wording of the read in provision found in the *De Vos* judgement.
	6. Clause 2, aims to amend section 78(6) of the Criminal Procedure Act, 1977.
	7. Section 78(6) provides that a court can order an accused who is found to be not criminally responsible by reason of mental illness or intellectual disability, be detained in a psychiatric hospital or temporarily in a correctional health facility of a prison where a bed is not immediately available in a psychiatric hospital if the court is of the opinion that the accused poses a serious danger to himself or herself or others, pending the decision of a judge in chambers in terms of the Mental Health Care Act.
	8. The Court may also order that the person concerned be admitted and detained on an involuntary basis to a designated health establishment in terms of the Mental Health Care Act, 2002; be released subject to conditions or released unconditionally.
	9. Again the position of a child in need of care and protection is highlighted by providing for his or her referral to the children’s court.
	10. Clause 3 of the Bill amends section 79 of the Criminal Procedure Act, 1977, in line with the Pedro case, clarifying the composition of the panels that conduct the evaluation of an accused to determine whether an accused has the requisite criminal capacity.