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**PORTFOLIO COMMITTEE AMENDMENTS TO THE JUDICIAL MATTERS
AMENDMENT BILL [B14B – 2016]**

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1. INTRODUCTION

The Judicial Matters Amendment Bill [B14B-2016], as amended by the Portfolio Committee on Justice and Correctional Service is currently before the Select Committee on Justice and Security. The Bill seeks to amend, among other pieces of legislation, the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 (SOA) to further regulate the (a) categories of persons whose particulars must be included in the National Register for Sex Offenders; (b) inclusion of the particulars of convicted persons in the National Register for Sex Offenders and (c) designation of sexual offences courts.

2. OBJECTIVES OF THE JUDICIAL MATTERS AMENDMENT BILL [B14B – 2016]

- The Bill aims to amend the SOA to:
- Clarify that any contravention of section 24B of the Films and Publications Act 65 of 1996, which deals with various offences relating to child pornography, should also be regarded as a “sexual offence against a child” and are therefore applicable for purposes of including a person’s particulars in the National Register for Sex Offenders.
- Require that the historical information (for a period of five years prior to 16 June 2008, when the relevant section of the SOA commenced)¹ of a perpetrator whose particulars must be included in the National Register for Sex Offenders, for offences committed against children and persons with disabilities, must be forwarded to the Registrar by SAPS, Correctional Services and Health.

170614 PC Security

¹ Effectively from 2003.



3. PUBLIC SUBMISSIONS RECEIVED AND PORTFOLIO COMMITTEE PROCESS

- In 4 May 2017 the Portfolio Committee on Justice and Correctional Services considered public submissions received from two women's organisations, namely Rape Crisis and the Women's Legal Centre, regarding the designation of sexual offences courts²:
- The organisations rejected the proposed amendment to remove the word "exclusively" from the SOA³, arguing that this would "undermine the progressive realisation of dedicated sexual offences courts...The re-establishment of dedicated sexual offences courts was investigated and recommended by a Ministerial Task Team [MATTSO] in 2013...to ensure a victim-centred criminal justice system, the reduction of secondary victimisation, improvement of court personnel skills, the reduction in the cycle time of the finalisation of cases and to generally contribute to the efficient prosecution and adjudication of [sexual offences] cases. The recommendations were accepted by the Minister and enabling legislation was promulgated in 2013. However, the 2013 legislation which provides for the designation of sexual offences courts exclusively for sexual offences matters has yet to commence. The MATTSO report recognised the need for hybrid court[s] as an interim measure: these hybrid courts would be progressively established as dedicated courts".
- The submission pointed out that a hybrid court "operates on a mixed roll to ensure that the court operates after the finalisation of sexual offences cases [but which also] leads to long delays in finalising sexual offence cases".
- The NGOS argued that the interpretation difficulties could be addressed with proper rephrasing without deleting the word "exclusively".
- The submission did not support the establishment of hybrid courts to deal with sexual offence matters.
- The NGOS supported the amendments to the SOA (a) to prioritise sexual offences matters and expedite the time-frames within which they must be dealt with, (b) that requires that regional court presidents of regional and districts courts should be consulted before such courts are designated as a sexual offences courts, and (c) to require that in order to deal appropriately with sexual offences cases in sexual offences courts, certain facilities, measures and services, to be prescribed by the Minister,⁴ must be in place and be complied with.
- They recommended that clear time-frames should be added and that the SOA be further amended to provide that all sexual offences cases committed in the jurisdiction of an established sexual offences court must be heard by such court.

² Summary of Submissions: Judicial Matters Amendment Bill [B 14 – 2016]. 2 May 2017. Committee Section. Parliament of South Africa.

³ Clause 37 of the Bill seeks to amend section 55A(1)(b) of the SOA.

⁴ In terms of section 67 of the SOA



4. MAIN PORTFOLIO COMMITTEE AMENDMENTS

- On 24 May 2017 the Portfolio Committee on Justice and Correctional Services reported the Bill with amendments.
- The Portfolio Committee:

Rejected Clause 37 in the Bill that proposed to remove the word “exclusively” found in section 55A (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, which empowers the Minister to designate any division of the High Court or Magistrates Court at which a sexual offences court must be established.

Amended Clause 38⁵ to clarify, *inter alia*, that the Chief Justice must be consulted where a sexual offences court is to be established at a division of the high court or magistrates’ court.

Inserted a new Clause 35 to insert a definition of “sexual offences court” in section 1 of the SOA that provides that the court roll of a sexual offences court deals exclusively with criminal proceedings relating to sexual offences. This will ensure that sexual offences matters get the priority attention they deserve.

In terms of the definition,

“**sexual offences court**” means a court that has a court roll that deals exclusively with the bail application, plea proceedings, trial or sentencing of a person in criminal proceedings arising out of –

- (a) an alleged commission of a sexual offence in terms of the common law, any offence in terms of the Sexual Offences Act, 1957 (Act No. 23 of 1957), or any offence in terms of this Act;
- (b) any offence in terms of any other law which has a bearing on sexual offences contemplated in paragraph (a), or which involves the complainant against whom a sexual offence contemplated in paragraph (a) is alleged to have been committed; or
- (c) any offence in terms of any other law which the Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by him or her, deems expedient or necessary for the administration of justice in a particular case, to be disposed of together with an offence contemplated in paragraph (a), and which has facilities, measures, services and requirements as prescribed by the Minister by regulation in terms of section 55A(6) of the Act;”.

⁵ The numbering of the amended bill is unclear as Clause 38 in the original bill deals with human trafficking provisions. Rather, this should be referred to as a new Clause 37 or amended Clause 37.



5. SOURCES

Report of the Portfolio Committee on Justice and Correctional Services on the Judicial Matters Amendment Bill [B 14 - 2016] (National Assembly – section 75), dated 24 May 2017.

Judicial Matters Amendment Bill [B14 – 2016]

Judicial Matters Amendment Bill [B14A – 2016]

Judicial Matters Amendment Bill [B14B – 2016]