

REPUBLIC OF SOUTH AFRICA

CORRECTIONAL MATTERS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33683 of 25 October 2010)
(The English text is the official text of the Bill)*

(MINISTER OF CORRECTIONAL SERVICES)

[B 41—2010]

ISBN 978-1-77037-744-8

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To repeal provisions establishing an incarceration framework introduced by the Correctional Services Amendment Act, 2008; to amend the Correctional Services Act, 1998, so as to amend a definition and insert new definitions; to provide for a new medical parole system; to clarify certain provisions relating to parole; to provide for the management and detention of remand detainees; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 111 of 1998, as amended by section 1 of Act 32 of 2001 and section 1 of Act 25 of 2008

1. Section 1 of the Correctional Services Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “**inmate**” of the following definition:
“ **‘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, and for the purposes of sections 2, 4, 11, 12, 13, 14, 15, 18, 19, 26 to 35, 85, 90, 93, 99, 101 and 115 to 123 includes a remand detainee;”; and

(b) by the insertion after the definition of “**registered nurse**” of the following definitions:

“ **‘remand detainee’**—

(a) means a person detained in a remand detention facility awaiting the finalisation of his or her trial until being convicted or acquitted, inclusive of the period during which the conviction or acquittal are subject to review or appeal, if such person has not commenced serving such sentence or is not already serving a prior sentence; and

(b) includes—

(i) a person contemplated in section 9 of the Extradition Act, 1962 (Act No. 67 of 1962), detained for the purposes of extradition; and

(ii) unsentenced persons detained under the provisions of the Mental Health Care Act, 2002 (Act No. 17 of 2002);

‘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; 5

‘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;”.

Amendment of section 3 of Act 111 of 1998, as amended by section 2 of Act 32 of 2001 10

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Department must—
- (a) fulfil the purpose of the correctional system in terms of this Act; 15
 - (b) as far as practicable, be self-sufficient and operate according to business principles; **[and]**
 - (c) perform all work necessary for its effective management; and
 - (d) manage remand detainees.”.

Amendment of section 5 of Act 111 of 1998, as amended by section 4 of Act 32 of 2001 and section 4 of Act 25 of 2008 20

3. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - “The Minister may by notice in the *Gazette*, establish and review the establishment of correctional centres and remand detention facilities for—”; and 25
- (b) by the substitution for subsection (2) of the following subsection:
 - “(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. 30 35
 - (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 a month unless a longer period is authorised by the National Commissioner.”.

Amendment of section 10 of Act 111 of 1998 40

4. Section 10 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 17 of Act 111 of 1998, as amended by section 3 of Act 25 of 2008

5. Section 17 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: 45

- “(4) **[Persons awaiting trial or sentence]** Remand detainees or unsentenced offenders must be provided with the opportunities and facilities to prepare their defence.”.

Amendment of section 38 of Act 111 of 1998, as amended by section 30 of Act 25 of 2008 50

6. Section 38 of the principal Act is hereby amended—

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

- “(h) allocation to a specific correctional centre; **[and]**”;
- (b) by the substitution in subsection (1) for paragraph (i) of the following paragraph:
- “(i) needs regarding reintegration into the community; **and**”; and
- (c) by the addition in subsection (1) after paragraph (i) of the following paragraph: 5
- “(j) restorative justice requirements.”.

Amendment of section 39 of Act 111 of 1998, as amended by section 31 of Act 25 of 2008

7. Section 39 of the principal Act is hereby amended— 10

- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(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 such sentences shall run concurrently but— 15

- (i) any determinate sentence of incarceration to be served by any person runs concurrently with a life sentence or with a sentence of incarceration to be served by such person in consequence of being declared **[an habitual criminal or]** a dangerous criminal; 20
- (ii) one or more life sentences and one or more sentences to be served in consequence of a person being declared **[an habitual criminal or]** a dangerous criminal also run concurrently; **[and]** 25
- (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.”; and 30 35

- (b) by the substitution for subsection (3) of the following subsection:
- “(3) The date of expiry of any sentence of incarceration being served by a sentenced offender who escapes from lawful custody **[extradited in terms of the Extradition Act, 1962 (Act No. 67 of 1962), and returns to the Republic]**, who absconds from the system of community corrections or who is unlawfully discharged is postponed by the period by which such sentence was interrupted.”. 40

Amendment of section 42 of Act 111 of 1998, as amended by section 22 of Act 32 of 2001 and substituted by section 34 of Act 25 of 2008 45

8. Section 42 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

- “(d) submit a report, together with the relevant documents, to the Correctional Supervision and Parole Board regarding— 50
- (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; 55
- (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) [a sentenced offender who has been declared a habitual criminal which indicates that—
- (aa) there is a reasonable probability that such an offender will in future abstain from crime and lead a useful and industrious life; or
- (bb) such an offender is no longer capable of engaging in crime; or
- (cc) for any other reason, it is desirable to place such an offender on parole] the assessment results and the progress with regard to the correctional sentence plan contemplated in section 38;
- (vi) the possible [re-placement] placement of [such] 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)[, 286B(4)(b)(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 [or on], parole or medical parole, and the conditions for such placement; [and]
- (viii) [such other matters as the Correctional Supervision and Parole Board may request] 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”.

Substitution of Chapter V of Act 111 of 1998

9. The following Chapter is hereby substituted for Chapter V of the principal Act:

“CHAPTER V

MANAGEMENT, SAFE CUSTODY AND WELL-BEING OF REMAND DETAINEES

Management, safe custody and well-being of remand detainees

46. (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.

(3) The provisions of section 6 to 24 apply to a remand detainee with such changes as may be required by the context.

Food and drink

47. Subject to restrictions which may be prescribed by regulation, remand detainees may be allowed to have food and drink from their visitors in the remand detention facility.

Clothing

48. Every remand detainee must wear a prescribed uniform which distinguishes him or her from a sentenced offender for the maintenance of security and good order in the remand detention facility.

Safekeeping of information and records

49. (1) Any person requesting information relating to the incarceration of a remand detainee, must use the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), to make such request.

(2) Information and records, as prescribed by regulation, must be kept at the relevant detention facility for the periods as provided for in the Archives Act, 1996 (Act No. 43 of 1996).

5

Pregnant women

49A. (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.

10

(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) The provisions of section 12 apply to pregnant remand detainees with such changes as may be required by the context.

15

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

(5) The provisions of section 20 apply to a pregnant remand detainee with such changes as may be required by the context.

20

Disabled remand detainees

49B. (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.

25

(2) The Department may 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.

30

Aged remand detainees

49C. (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.

35

(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.

40

Mentally ill remand detainees

49D. (1) The National Commissioner may detain a person suspected to be mentally ill in a single cell or hospital section for purposes of observation by a medical practitioner.

45

(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 may, as far as practicable, provide social and psychological services in order to support mentally ill remand detainees and promote their mental health.

50

Referral of terminally ill or severely incapacitated remand detainee to court

- 49E.** (1) If the Head of a remand detention facility or correctional centre, as the case may be, is of the opinion that—
- (a) a remand detainee is, based on the written advice of the medical practitioner treating that person, suffering from a terminal disease or condition or if such detainee is rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care; 5
 - (b) the remand detention facility or correctional centre in question cannot provide adequate care for such detainee; and 10
 - (c) there are appropriate arrangements for the remand detainee's supervision, care and treatment within the community to which the inmate is to be released,
- that Head may apply to the court concerned, in the manner set out in this section, for the release of such detainee. 15
- (2) (a) An application contemplated in subsection (1) must be lodged in writing with the clerk of the court, and must—
- (i) contain an sworn statement or affirmation by the Head of the remand detention facility or correctional centre concerned to the effect that he or she is satisfied that the conditions stipulated in subsection (1) have been met; and 20
 - (ii) contain a written certificate by the Director of Public Prosecutions concerned, or a prosecutor authorised thereto by him or her in writing, to the effect that the prosecuting authority does not oppose the application. 25
- (b) The remand detainee and his or her legal representative, if any, must be notified of an application referred to in subsection (1).
- (3) The National Commissioner may, in consultation with the National Director of Public Prosecutions, issue directives regarding the procedure to be followed by a Head of a remand detention facility or correctional centre, as the case may be, and a Director of Public Prosecutions whenever it is necessary to bring an application contemplated in subsection (1). 30

Release under supervision of South African Police Service

- 49F.** (1) No remand detainee may be surrendered to the South African Police Service for the purpose of further investigation into charges other than those charges for which he or she is detained, without authorisation by the National Commissioner. 35
- (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. 40
- (3) The National Commissioner of the South African Police Service having custody of the remand detainee may, on good cause shown, apply to the National Commissioner for an extension of the period referred to in subsection (2). 45

Maximum incarceration period

- 49G.** (1) The period of incarceration of a remand detainee must not exceed two years from the initial date of admission into the remand detention facility without such matter having been brought to the attention of the court concerned in the manner set out in this section. 50
- (2) The Head of the remand detention facility must report to the relevant Director of Public Prosecutions at six-monthly intervals the cases of remand detainees in his or her facility that are being detained for a successive six-month period.
- (3) Any remand detainee whose detention will exceed the period stipulated in subsection (1) must be referred to the relevant court by the Head of the remand detention facility or correctional centre, as the case may 55

be, to determine the further detention of such person or release under conditions appropriate to the case.

(4) If, subsequent to the referral of the remand detainee to court as contemplated in subsection (3), the finalisation of his or her case is further delayed, the Head of the remand facility or correctional centre, as the case may be, must refer the matter back to the court on a yearly basis to determine the remand detainee's further detention or release under conditions appropriate to the case.

(5) The National Commissioner may, in consultation with the National Director of Public Prosecutions, issue directives regarding the procedure to be followed by a Head of a remand detention facility or correctional centre, as the case may be, and a Director of Public Prosecutions whenever it is necessary to bring an application contemplated in subsection (3) or (4)."

Amendment of section 54 of Act 111 of 1998

10. Section 54 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(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."

Amendment of section 70 of Act 111 of 1998, as amended by section 26 of Act 32 of 2001 and section 46 of Act 25 of 2008

11. Section 70 of the principal Act is hereby amended by the substitution for subparagraph (ii) of subsection (1)(a) of the following subparagraph:

"(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 **[or, if a Correctional Supervision and Parole Board under whose jurisdiction such person falls imposed the conditions of community corrections, before such Board]**;"

Amendment of section 73 of Act 111 of 1998, as amended by section 27 of Act 32 of 2001

12. The following section is hereby substituted for section 73 of the principal Act:

"Length and form of sentences

73. (1) Subject to the provisions of this Act—

(a) a sentenced **[prisoner]** offender remains in **[prison]** a correctional centre for the full period of sentence; and

(b) **[a prisoner]** an offender sentenced to life **[imprisonment]** incarceration remains in **[prison]** a correctional centre for the rest of his or her life.

(2) Any sick **[prisoner]** sentenced offender whose sentence has expired but whose release is certified by the correctional medical [officer] practitioner to be likely to result in his or her death or impairment of his or her health or to be a source of infection to others, may be temporarily detained until his or her release is authorised by the correctional medical [officer] practitioner.

(3) A sentenced **[prisoner]** offender must be released from **[prison]** a correctional centre and from any form of community corrections imposed in lieu of part of a sentence of **[imprisonment]** incarceration when the term of **[imprisonment]** incarceration imposed has expired.

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

(5) (a) **[Subject to the conditions of community corrections set by such Board or court]** A sentenced offender may be placed under correctional supervision, on day parole, parole or medical parole—

- (i) **[a prisoner must be placed under correctional supervision or on day parole or parole]** on a date determined by the Correctional Supervision and Parole Board; or 5
- (ii) in the case of **[a prisoner]** an offender sentenced to life **[imprisonment on day parole or on parole]** incarceration, on a date to be determined by the **[court]** Minister.

(b) Such placement is subject to the **[prisoner]** provisions of Chapter VI and such offender accepting the conditions for placement. 10

(6) (a) Subject to the provisions of paragraph (b), **[a prisoner]** 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 **[prisoner]** 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 **[prisoner]** sentenced offender has served 25 years of a sentence or cumulative sentences. 15

(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. 20

(b) A person who has been sentenced to— 25

- (i) periodical **[imprisonment]** incarceration must be detained periodically in a **[prison]** correctional centre as prescribed by regulation;
- [(ii) imprisonment for corrective training, may be detained in a prison for a period of two years and may not be placed on parole until he or she has served at least 12 months;** 30
- [(iii) imprisonment for the prevention of crime, may be detained in a prison for a period of five years and may not be placed on parole until he or she has served at least two years and six months;]**
- (iv) life **[imprisonment]** incarceration, may not be placed on day parole or parole until he or she has served at least 25 years of the sentence **[but a prisoner on reaching the age of 65 years may be placed on parole if he or she has served at least 15 years of such sentence];** or 35
- [(v) imprisonment contemplated in section 51 or 52 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), may not be placed on parole unless he or she has served at least four fifths of the term of imprisonment imposed or 25 years, whichever, is the shorter, but the court, when imposing imprisonment, may order that the prisoner be considered for placement on parole after he or she has served two thirds of such term]** 40
- (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. 45

(c) A person who has been declared **[an]** a habitual criminal may be detained in a **[prison]** 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. 50

(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. 55

(7) (a) A person sentenced to **[imprisonment]** 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[, **but if more than one sentence has been imposed under section 276(1)(i) of the** 60

said Act, the person may not be placed under correctional supervision for a period exceeding five years].

(b) [If a person has been sentenced to imprisonment under section 276(1)(i) of the Criminal Procedure Act, and to imprisonment for a period not exceeding five years as an alternative to a fine the person must serve at least one sixth of the effective sentences before being considered for placement under correctional supervision, unless the court has directed otherwise] 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) [If a person has been sentenced to imprisonment for—
 (i) a definite period under section 276(1)(b) of the Criminal Procedure Act;
 (ii) imprisonment under section 276(1)(i) of the said Act;
 (iii) a period not exceeding five years as an alternative to a fine; the person shall serve at least a quarter of the effective sentence imposed or the non-parole period, if any, whichever is the longer before being considered for placement under correctional supervision, unless the court has directed otherwise] 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 [imprisonment] incarceration for a definite period in terms of section 276(1)(b) of the [said] 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.”.

Amendment of section 75 of Act 111 of 1998, as amended by section 29 of Act 32 of 2001 and section 51 of Act 25 of 2008

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

- (a) by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
- “(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;
- (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 [or], day parole [or], 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
- (c) in respect of any sentenced offender serving a sentence of life incarceration, make recommendations to the Minister on granting of day parole [or], parole or medical parole, and, subject to the provisions of section 52, the conditions of community corrections to be imposed on such an offender.”;

- (b) by the substitution for subsection (4) of the following subsection:
 - “(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 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.”; 5
- (c) by the substitution for subsection (5) of the following subsection:
 - “(5) If, after the Board has approved a sentenced offender being placed under correctional supervision or **[be] being granted day parole [or], 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.”; 10 15
- (d) by the substitution for subsections (6), (7) and (8) of the following subsections, respectively:
 - “(6) When the Board or the Minister cancels correctional supervision **[or], day parole [or], parole or medical parole,** the matter may be reconsidered by the Board or the Minister within such period as **[it] the Board or the Minister** deems fit, but **[it]** the Board or the Minister must do so within two years. 20
 - (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 25
 - (b) cancel correctional supervision or day parole or parole or medical parole and alter the conditions for community corrections applicable to such person. 30
 - (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 35
 - (b) the record of the proceedings before the Board must be submitted to the Correctional Supervision and Parole Review Board.”; and 40
- (e) by the addition after subsection (8) of the following subsection: 40
 - “(9) The Minister may cancel correctional supervision, day parole or parole as referred to in subsection (6) only if the decision to grant correctional supervision, day parole or parole was taken by the Minister.”.

Substitution of section 79 of Act 111 of 1998, as amended by section 55 of Act 25 of 2008 45

14. The following section is hereby substituted for section 79 of the principal Act:

“Medical parole

- 79.** (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— 50
- (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; 55
 - (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.

(b) An application lodged by a sentenced offender 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 may establish a medical advisory board for each province, to provide an independent medical report at the request of a Correctional Supervision and Parole Board, 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 sentenced offender may not be placed on medical parole in circumstances where the medical conditions, which form the basis of the medical practitioner's diagnosis or prognosis under subsection (2), were self-induced.

(5) (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.

(6) 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).

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

(8) 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.

(9) The Minister must make regulations regarding the processes and procedures to follow in the consideration and administration of medical parole.”.

Amendment of section 90 of Act 111 of 1998, as amended by section 65 of Act 25 of 2008

15. Section 90 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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.”.

Insertion of section 128A in Act 111 of 1998 10

16. The following section is hereby inserted in the principal Act, after section 128:

“Falsifying identification

128A. 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.”.

Amendment of section 134 of Act 111 of 1998

17. Section 134 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (kkH) of the following paragraphs: 20

“(kkI) the information and data to be kept relating to the incarceration of a remand detainee;

(kkJ) the safe custody of remand detainees and the maintenance of good order, discipline and security in remand detention facilities;

(kkK) the obtaining, safekeeping and retaining of information relating to the incarceration of a remand detainee; 25

(kkL) the location, transfer, placement and release of remand detainees;

(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; 30

(kkN) the diet of a pregnant remand detainee, a child in custody with a remand detainee and an aged remand detainee;

(kkO) accommodation of remand detainees who are pregnant, aged, mentally ill or mothers with newborn children;

(kkP) the conditions subject to which a remand detainee may be permitted to have her child with her; 35

(kkQ) the clothing to be supplied to, and worn by, remand detainees;

(kkR) visits to remand detention facilities by relatives and others of aged or mentally ill remand detainees;

(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; 40

(kkT) the provision of food and drink to remand detainees by their visitors;

(kkU) the admission to a remand detention facility of any person;

(kkV) those amenities susceptible to restriction as a penalty for disciplinary infringements and the amenities allowed to remand detainees; 45

(kkW) the treatment of mentally ill or aged remand detainees;

(kkX) the conditions and procedures to be followed where an application is lodged in terms of section 49E;

(kkY) the conditions and procedures to be followed where a remand detainee is surrendered to the South African Police Service for investigation purposes; 50

(kkZ) the conditions and procedures to be followed where a referral is made in terms of section 49G; and

(kkZA) the composition of the medical parole advisory boards;”.

Amendment of Table of Contents of Act 111 of 1998

18. The Table of Contents of the principal Act is hereby amended by the substitution for the reference to Chapter V of the following reference:

“CHAPTER V

MANAGEMENT, SAFE CUSTODY AND WELL-BEING OF REMAND DETAINEES 5

46. Management, safe custody and well-being of remand detainees	
47. Food and drink	
48. Clothing	
49. Safekeeping of information and records	10
49A. Pregnant women	
49B. Disabled remand detainees	
49C. Aged remand detainees	
49D. Mentally ill remand detainees	
49E. Referral of terminally ill or severely incapacitated remand detainee to court	15
49F. Release under supervision of South African Police Service	
49G. <u>Maximum incarceration period.</u> ”.	

Repeal of sections 48 and 49 of Act 25 of 2008

19. Sections 48 and 49 of the Correctional Services Amendment Act, 2008, are hereby repealed. 20

Amendment of section 87 of Act 25 of 2008

20. Section 87 of the Correctional Services Amendment Act, 2008, is hereby amended by the deletion of subsection (3).

Short title and commencement 25

21. This Act is called the Correctional Matters Amendment Act, 2010, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL MATTERS AMENDMENT BILL

1. BACKGROUND AND PURPOSE

1.1 The Correctional Matters Amendment Bill, 2010 (the Bill), seeks to improve the administration of three key areas of corrections, namely medical parole, the parole system in general and the management of remand detention.

1.2 The current provisions of the Correctional Services Act, 1998 (the principal Act), limit the granting of medical parole to sentenced offenders who are in the final phase of a terminal illness. Many seriously ill or similarly incapacitated inmates are therefore not eligible for consideration of placement on medical parole as they cannot be medically certified as being in the final stages of a terminal illness. Medical practitioners are reluctant to recommend placement on medical parole within the limited definition currently applicable. The reluctance on the part of medical practitioners can also be attributed to media and societal pressures associated with such recommendations in a situation where 60% of inmates do not pass away after placement on medical parole. At the same time the reluctance of medical practitioners to recommend the placement of inmates on medical parole, in order to die a dignified and consolatory death outside, results in a very high number of natural deaths within the centres of the Department of Correctional Services (the Department). This scenario further puts serious pressure on already limited financial and human resources required for meeting the health care needs of inmates. In order to address the shortcomings outlined above, the Bill introduces a new medical parole system, which aims to balance the medical condition of the inmate against the risk posed to society should such inmate be placed on medical parole. In this model there are three factors which must be present in order to qualify for consideration for placement on medical parole. Not only should the inmate suffer from a terminal illness or be rendered physically incapacitated as a result of injury, disease or illness so as to severely limit daily activity or inmate self-care, but the risk of re-offending must also be low and there must be appropriate arrangements for the inmate's supervision, care and treatment upon release.

1.3 In 2008, the development of an incarceration framework was proposed in order to substitute the existing framework, which was spelt out in the principal Act, for the determination of minimum periods which offenders have to serve before qualifying for consideration for placement on parole. The incarceration framework had to be developed by the National Council for Correctional Services (NCCS), acting in consultation with the National Commissioner.

In the process of developing the incarceration framework a number of questions with regard to the desirability of developing such a framework were raised. Chief amongst those are the following:

- (1) The development of a third parole system in South Africa is highly undesirable and unworkable;
- (2) uncertainty as to the legal standing of the process set out for the adoption of the incarceration framework; and
- (3) no version of an incarceration framework could practically achieve the desired outcomes as stipulated in section 73A(2) of the Correctional Services Amendment Act, 2008 (Act No. 25 of 2008).

It has therefore been decided not to proceed with the development of an incarceration framework, but instead to strengthen the existing legislative framework which regulates the determination of minimum periods to be served by sentenced offenders before consideration of placement on parole. The Bill repeals all provisions referring to the development of an incarceration framework, whilst at the same time addressing shortcomings with the functioning of the current parole system.

1.4 The Cabinet Lekgotla in January 2006 directed a Cluster Project aimed at refining the remand detention system in South Africa on the basis that remand detention is a distinct function from corrections. One of the tasks of the project was to review the existing policy and regulatory framework governing remand detention. The Bill proposes to strengthen the Chapter dealing with remand detainees within the principal Act by:

- providing that distinct clothing must be worn by remand detainees for security reasons;
- further regulating the surrender of remand detainees to the police for further investigations; and
- fixing the time that a person should remain in remand detention. An enabling legislative instrument was also required for the release of gravely ill remand detainees from remand detention, subject to conditions.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

Consultation has taken place with the NCCS with regard to the repeal of the incarceration framework and the development of a new medical parole system.

3. IMPLICATIONS FOR PROVINCES

None.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The Department will budget for the medical parole advisory body as well as the new Remand Detention Branch.

5. FINANCIAL IMPLICATIONS FOR STATE

The establishment of a new branch on Management of Remand Detainees and the new Medical Parole Advisory Body will have financial implications. Providing remand detainees with clothing and making remand detention facilities accessible to remand detainees with disabilities will also have financial implications. The establishment of a remand detention budget programme and appropriate allocation to this budget programme will need to be addressed through, on the one hand, disaggregating funding from the other budget programmes and, on the other, ensuring that appropriate allocations are made in other respects.

6. COMMUNICATION IMPLICATIONS

The Department consulted on the Bill with government stakeholders in the Justice, Crime Prevention and Security Cluster, the National Council for Correctional Services and internal implementers. Stakeholders in civil society and the general public were also invited to comment on the content of the regulatory changes.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Correctional Services are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.