

REPUBLIC OF SOUTH AFRICA

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# CORRECTIONAL SERVICES AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43931 of 24 November 2020)  
(The English text is the official text of the Bill)*

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(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 32—2020]

ISBN 978-1-4850-0683-1

No. of copies printed ..... 350



**Amendment of section 136 of Act 111 of 1998, as amended by section 42 of Act 32 of 2001**

3. Section 136 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any person serving a sentence of incarceration **[immediately]** for 5  
an offence committed 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 10  
 guidelines applied by the former Parole Boards prior to the commence-  
 ment of those Chapters.”; and

(b) by the substitution in subsection (3) for paragraph (a) of the following  
 paragraph:

“(a) Any sentenced offender serving a sentence of life incarceration 15  
**[immediately]** for an offence committed 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.”.

**Short title and commencement**

4. This Act is called the Correctional Services Amendment Act, 2020, and comes into 20  
 operation on a date determined by the President by proclamation in the *Gazette*.

## MEMORANDUM ON THE OBJECTS OF THE CORRECTIONAL SERVICES AMENDMENT BILL, 2020

### 1. BACKGROUND

The review of the Correctional Services Act, 1998 (Act No. 111 of 1998) (“the principal Act”), was necessary in view of the following:

- (a) The President assigned the portfolios of the Department of Justice and the Department of Correctional Services under one Minister. Consequently, this necessitates an amendment to the definition of ‘Minister’ in the principal Act to accord with this decision.
- (b) The Constitutional Court in the judgment dated 3 May 2019 of **Oupa Chipane Phaahla v the Minister of Justice and Correctional Services & Others** (Case CCT 44/18) (“**Phaahla** judgment”) found certain sections of the principal Act to be unconstitutional and ordered that those sections be amended within a period of twenty four months (24) from the date of the order. The relevant sections of the principal Act must therefore be amended in compliance with the **Phaahla** judgment.
- (c) The Constitutional Court in the **Phaahla** judgment declared sections 136(1) and 73(6)(b)(iv) of the principal Act to be inconsistent with sections 9(1) and 35(3)(n) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), and ordered that section 136(1) be amended to apply parole regimes on the basis of the date of the commissioning of an offence, and not on the date of sentencing as provided in the principal Act.
- (d) Section 136(1) of the principal Act is a transitional provision, and the Constitutional Court ordered that this section should read as follows:  
*“Any person serving a sentence of incarceration for an offence committed before the commencement of Chapters IV, VI and VII of the Correctional Services Act is subject to the provisions of the Correctional Services Act, 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.”. (Our underlining)*
- (e) For the purpose of the practical application of the principal Act and in light of the **Phaahla** judgment, certain provisions of the principal Act require amendments.

### 2. OBJECTS OF BILL

- 2.1 The Bill seeks to amend the principal Act in order to align the definition of ‘Minister’ with the amended portfolios as assigned by the President.
- 2.2 The Bill further proposes amendments to the principal Act to align it with the Constitution and the **Phaahla** judgment mentioned above with regard to the placement of a sentenced offender under day parole, parole and correctional supervision; and to provide for the minimum periods to be served before becoming eligible for consideration for such release and placement in terms of the parole regime applicable at the date of commissioning of an offence.

### 3. INSTITUTIONS/PERSONS/BODIES CONSULTED

- (a) National Council for Correctional Services;
- (b) National Management Committee of the Department of Correctional Services; and
- (c) Development Committee for the Justice Cluster.

#### **4. FINANCIAL IMPLICATIONS FOR STATE**

There are no financial implications regarding the implementation of the proposed amendments because the implementation of the provision is already catered for in the baseline budgetary allocation of the Department.

#### **5. COMMUNICATION IMPLICATIONS**

The Department will communicate to criminal justice system role-players, stakeholders in civil society, the general public and the internal implementers in relation to the content of these regulatory changes. The Government Communication and Information Systems (GCIS) will be utilised for broader communication of the regulatory changes and their implication for the parole system.

#### **6. PARLIAMENTARY PROCEDURE**

- 6.1 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 since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 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.





Printed by Creda Communications

ISBN 978-1-4850-0683-1