

CORRECTIONAL SERVICES AMENDMENT ACT

PRESIDENT'S OFFICE

No. 803. 10 May 1996

NO. 14 OF 1996: CORRECTIONAL SERVICES AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words *in bold italics* indicate omissions from existing enactments.

Words *in italics* indicate insertions in existing enactments.

ACT

To amend the Correctional Services Act, 1959, so as to make provision for certain extraordinary interim measures in respect of the detention of unconvicted young persons accused of having committed certain serious offences; and to provide for matters connected therewith.

(English text signed by the President.)(Assented to 10 April 1996)

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

Amendment of section 29 of Act 8 of 1959, as substituted by section 1 of Act 17 of 1994

1. Section 29 of the Correctional Services Act, 1959, is hereby amended-

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

"(2) A person referred to in paragraph (a) or (b) of subsection (1) may be detained in a police cell or lock-up after his or her arrest until he or she is brought before a court within a period not exceeding 24 hours *in respect of a person referred to in paragraph (a) of that subsection and not exceeding 48 hours in respect of a person referred to in paragraph (b) of that subsection, if-*";

(b) by the substitution for subsection (5) of the following subsection:

"(5) (a) *A person referred to in subsection (1)(b) who is accused of having committed an offence shall before his or her conviction and sentence, not be detained in a prison or a police cell or lock-up unless the presiding officer has reason to believe*

that his or her detention is necessary in the interests of the administration of justice and the safety and protection of the public and no secure place of safety, within a reasonable distance from the court, mentioned in section 28 of the Child Care Act, 1983 (Act No. 74 of 1983), is available for his or her detention: Provided that such a person may only be detained in a prison (but not a police cell or lock-up) if he or she is accused of having committed an offence or category of offences mentioned in Schedule 2, or any other offence, in circumstances of such a serious nature as to warrant such detention: Provided further that such a person shall be brought before the court that made the order of such detention every 14 days to enable such court to reconsider the said order.

(b) In the absence of the said presiding officer any other presiding officer of that court may, after consideration of the evidence recorded and in the presence of the said person, make such order as the presiding officer who is absent could lawfully have made in the proceedings in question if he or she had not been absent.";

(c) by the insertion after subsection (5) of the following subsections:

"(5A) (a) In considering whether the interests of the administration of justice and the safety and protection of the public necessitate the detention of a person referred to in subsection (1)(b) in a prison (but not a police cell or lock-up) the presiding officer shall, in addition to any factor which he or she deems necessary, take into account the following factors, namely-

(i) the substantial risk of absconding from a place of safety mentioned in section 28 of the Child Care Act, 1983 (Act No. 74 of 1983);

(ii) the substantial risk of causing harm to other persons awaiting trial in a place of safety; and

(iii) the disposition of the accused to commit offences.

(b) Before the detention of a person in terms of subsection (5) is ordered, oral evidence shall be presented by the State with regard to the factors referred to in paragraph (a).

(c) A person detained in terms of subsection (5) shall as soon as possible after his or her arrest be afforded the opportunity to obtain legal representation as contemplated in section 25 of the Constitution and section 3 of the Legal Aid Act, 1989 (Act No. 22 of 1989).

(d) The highest priority shall be given to the most expeditious processing of the trial of a person detained in terms of subsection (5).

(5B) The Minister of Correctional Services shall as soon as possible after the commencement of this Act, ensure that regulations regarding the treatment and conditions of detention of awaiting trial persons under the age of 18 years are brought into line with relevant internationally recognised human rights standards and norms."; and

(d) by the addition after subsection (7) of the following subsection:

"(8) For the purpose of this section, an unconvicted person shall be construed as a person who has not been convicted or sentenced".

Substitution of Schedule 2 to Act 8 of 1959

2. The following Schedule is hereby substituted for Schedule 2 to the Correctional Services Act, 1959:

"SCHEDULE 2 (Section 29(5))

Murder

Rape

Robbery where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved

Assault with intent to commit grievous bodily harm, or when a dangerous wound is inflicted

Assault of a sexual nature

Kidnapping

Arson

Breaking or entering any premises with intent to commit an offence

Any offence under any law relating to the illicit conveyance or supply of dependence producing drugs

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule."

Savings

3. Section 1 (a) of this Act shall cease to have effect after the expiry of a period of one year from the commencement thereof: Provided that Parliament may at the expiry of the one year period, extend the period for one further year.

Short title

4. This Act shall be called the Correctional Services Amendment Act, 1996.