

REPUBLIC OF SOUTH AFRICA

PROBATION SERVICES AMENDMENT BILL

*(As amended by the Portfolio Committee on Social Development (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B 18D—2002]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP PROEFDIENSTE

(Soos goedgekeur deur die Portefeuljekomitee oor Maatskaplike Ontwikkeling (Nasionale Vergadering)) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VAN MAATSKAPLIKE ONTWIKKELING)

[W 18D—2002]

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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 amend the Probation Services Act, 1991, so as to insert certain definitions; to make further provision for programmes aimed at the prevention and combating of crime; to extend the powers and duties of probation officers; to provide for the duties of assistant probation officers; to provide for the mandatory assessment of arrested children; to provide for the establishment of a probation advisory committee; to provide for the designation of family finders; 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 116 of 1991

1. Section 1 of the Probation Services Act, 1991 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion before the definition of “authorized probation officer” of the following definitions: 10
 - “‘assessment’ means a process of developmental assessment or evaluation of a person, the family circumstances of the person, the nature and circumstances surrounding the alleged commission of an offence, its impact on the victim, the attitude of the alleged offender in relation to the offence and any other relevant factor;
 - ‘assistant probation officer’ means a person appointed under section 4A and who assists and works under the supervision of a probation officer;”;
 - (b) by the insertion after the definition of “authorized probation officer” of the following definition: 15
 - “‘child’ means any person under the age of 18 years;”;
 - (c) by the insertion after the definition of “Director-General” of the following definitions: 20
 - “‘diversion’ means diversion from the formal court procedure with or without conditions;
 - ‘diversion programme’ means a programme within the context of the family and community—
 - (a) in respect of a person who is alleged to have committed an offence; and
 - (b) which is aimed at keeping that person away from the formal court procedure; 25

- ‘early intervention’ means the provision of services, diversion programmes and other programmes aimed at preventing the need for a person who is alleged to have committed an offence to be dealt with in terms of the formal court procedure;
- ‘family finder’ means a person appointed under section 9 and includes an assistant probation officer;
- ‘family group conferencing’ means a gathering convened by a probation officer as a diversion or sentencing option to devise a restorative justice response to the offence;
- ‘family member’ means a person who is related to another person biologically, by law or according to customary law;
- “ ‘home-based supervision’ means supervision under certain conditions where an arrested, accused, convicted or sentenced child in the care of his or her parents or guardian or in the custody of any other person, is monitored by an assistant probation officer;”;
- (d) by the insertion after the definition of “regulation” of the following definition: “ ‘restorative justice’ means the promotion of reconciliation, restitution and responsibility through the involvement of a child, and the child’s parents, family members, victims and the communities concerned;”;
- (e) by the substitution for the definition of “supervision” of the following definition: “ ‘supervision’ means supervision of **[a]** an accused, convicted or sentenced person by a probation officer **[by virtue]** in terms of the provisions of any law;”.

Amendment of section 3 of Act 116 of 1991

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

- (a) by the substitution for the words preceding paragraph (a) of the following words:
“The Minister may, in respect of different categories of persons, establish or cause to be established programmes or services which are aimed at—”;
- (b) by the substitution for paragraph (a) of the following paragraph:
“(a) the prevention and combating of crime;”;
- (c) by the substitution for paragraph (d) of the following paragraph:
“(d) the assessment, care, [and] treatment, support, referral for and provision of mediation in respect of the victims of crime;”;
- (d) by the deletion at the end of paragraph (i) of the word “and” and the addition after paragraph (j) of the following paragraphs:
“(k) early intervention, including family group conferencing; and
(l) restorative justice as part of appropriate sentencing and diversion options.”.

Amendment of section 4 of Act 116 of 1991

3. Section 4 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraphs:

- “(i) the reception, assessment and referral of an accused and the rendering of early intervention services and programmes, including mediation and family group conferencing;
- (j) the investigation of the circumstances of an accused and the provision of a pre-trial report recommending the desirability or otherwise of prosecution;
- (k) the investigation of the circumstances of a convicted person, the compiling of a pre-sentencing report, the recommendation of an appropriate sentence and the giving of evidence before the court.”.

Insertion of sections 4A and 4B in Act 116 of 1991

4. The following sections are hereby inserted in the principal Act after section 4:

“Appointment and duties of assistant probation officers

4A. (1) The Minister may appoint as many suitable persons as he or she may deem necessary as assistant probation officers to perform the duties imposed by or under this Act or any other law on an assistant probation officer.

(2) The duties of an assistant probation officer shall include—

- (a) the monitoring of a child subject to home-based supervision;
- (b) the monitoring of persons subject to supervision;
- (c) family finding;
- (d) the gathering of information for assessment by the probation officer;
and
- (e) assisting a probation officer with his or her duties.

Assessment of arrested child

4B. Any arrested child who has not been released shall be assessed by a probation officer as soon as reasonably possible, but before his or her first appearance in court in terms of section 50(1)(c) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977): Provided that if the child has not yet been assessed when brought before the court, the court may authorise the extension of the period within which the assessment must take place by periods not exceeding seven days at a time following his or her first court appearance.”.

Insertion of section 8A in Act 116 of 1991

5. The following section is hereby inserted in the principal Act after section 8:

“Establishment of probation advisory committee

8A. The Minister may, in the prescribed manner, establish and maintain a probation advisory committee to advise him or her on matters regarding probation services in the country.”.

Insertion of section 15A in Act 116 of 1991

6. The following section is hereby inserted in the principal Act after section 15:

“Family finders

15A. Whenever a child is brought before the court and the child’s parents or guardian is not present at court, a probation officer may designate a family finder to trace the parents or guardian and to bring them to court in order to assist the child in the case.”.

Short title

7. This Act is called the Probation Services Amendment Act, 2002.

**MEMORANDUM ON THE OBJECTS OF THE PROBATION
SERVICES AMENDMENT BILL, 2002**

OBJECTS

This Bill seeks to serve as an interim measure to facilitate the transformation of the child and youth care system and the proposed Child Justice Bill by amending the Probation Services Act, 1991 (Act No. 116 of 1991), hereinafter referred to as “the Act”, by—

- (a) inserting definitions relevant to the transformation of the child and youth care system;
- (b) inserting the definition of “family finder” whose main function would be to trace the parents or guardian of a child who is being prosecuted, so as to make them available to assist the child in court;
- (c) introducing assessment, support, referral and mediation services in respect of victims of crime;
- (d) introducing crime prevention strategies through the provision of early intervention programmes, such as family group conferencing;
- (e) providing for the establishment of restorative justice programmes and services as part of appropriate sentencing and diversion options;
- (f) providing for the reception, assessment and referral of an accused and the rendering of early intervention services and programmes, the investigation of the circumstances of an accused and the provision of a pre-trial report on the desirability or otherwise of prosecution, and the investigation of the circumstances of convicted persons;
- (g) providing for the duties of assistant probation officers;
- (h) providing for the mandatory assessment of every arrested child; and
- (i) providing for the establishment of a probation advisory committee to advise the Minister on matters with regard to probation services.

CONSULTATION

The Drafting Committees of the SA Law Commission for Child Justice Legislation and the Review of the Child Care Act were requested to send representatives to a consultative meeting with representatives from the national Department of Social Development and from the Interministerial Committee for Children at Risk. This meeting was held in Cape Town in November 1998. Thereafter, a group of drafters from the aforesaid groups worked together to prepare a draft Bill, which was presented to the Minister for Social Development on 18 December 1998. The MECs responsible for social development in the provinces were also consulted.

Cabinet approved the introduction of the Probation Services Amendment Bill in Parliament during January 1999 and the Bill was certified by the State Law Advisers in February 1999. On 3 March 1999 the Portfolio Committee on Social Development adopted the Bill. However, following representations from the Ministry of Justice, the debate on the Bill in the National Assembly did not proceed. The Department of Justice proposed a single amendment which was agreed to by the Department of Social Development and the State Law Advisers on 23 March 1999. However, it was too late to finalise the Bill during that session of Parliament.

During October 1999 the Department of Social Development was informed that the Bill needed to be resubmitted to Cabinet for approval. Further amendments to the Bill were then proposed and approved by role-players and by the national and provincial departments of Social Development.

The provisions of the Bill were also discussed and approved at various probation advocacy group meetings attended by policy-makers in the field of probation services and by provincial probation officers during March 2001. Provincial Departments of Social Development were also consulted at various meetings during 2001 and approved of the Bill. During March and May 2001 further discussions were held with officials from the Department of Justice who approved the Bill.

The provisions of this Bill were also discussed with officials from the Department of Justice in order to ascertain the relationship between this Bill and the proposed Child Justice Bill. It was found that there are no conflicting areas between the two Bills. It is also important to note that the Probation Services Act applies to children and adults while the Child Justice Bill will apply to children only.

FINANCIAL IMPLICATIONS FOR STATE

The Department of Social Development has considered any financial implications arising from the proposed Bill and the necessary budgetary provision has been factored into the Medium-Term Expenditure Framework.

Provincial departments of Social Development will assess the need for the appointment of assistant probation officers in their respective provinces.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Social Development are of the view that this Bill must be dealt with in accordance with 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.