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THE PRESIDENCY

No. 1389 7 November 2002

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

No. 35 of 2002: Probation Services Amendment Act, 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.

(English text signed by the President.)
(Assented to 31 October 2002.)

ACT

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—

(a) by the insertion before the definition of “authorized probation officer” of the following definitions:

“ ‘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:

“ ‘child’ means any person under the age of 18 years;”;

(c) by the insertion after the definition of “Director-General” of the following definitions:

“ ‘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;

'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. 5

(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; 10
 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.” 15 20

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.” 25

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 30

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 35

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