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THE PRESIDENCY

No. 387

19 May 2014

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

Act No. 14 of 2014: Judicial Matters Amendment Act, 2014



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.
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(English text signed by the President)
(Assented to 16 May 2014)

ACT

To amend—

- the Attorneys Act, 1979, so as to further regulate the powers of the board of control of the Attorneys Fidelity Fund;
- the Child Justice Act, 2008, so as to further regulate the evaluation of the criminal capacity of a child; to provide for the delegation of certain powers and assignment of certain duties by the Cabinet member responsible for social development in respect of the accreditation of diversion programmes and diversion service providers; to repeal provisions that make the Criminal Law Amendment Act, 1997, applicable to persons under the age of 18 years; and to provide for matters connected therewith.

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

Amendment of section 78 of Act 53 of 1979, as substituted by section 28 of Act 87 of 1989

1. Section 78 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (8) of the following subsection: 5

“(8) The court may on application made by the society of the province concerned or by the board of control, in consultation with the society of the province concerned, and on good cause shown, prohibit any practitioner from operating in any way on his or her trust account, and may appoint a *curator bonis* 10 to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.”.

Amendment of section 11 of Act 75 of 2008

2. Section 11 of the Child Justice Act, 2008, is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections, 15 respectively:

“(2) In making a decision regarding the criminal capacity of the child in question—

(a) (i) the inquiry magistrate, for purposes of diversion; or

[(b)] (ii) if the matter has not been diverted, the child justice court, for purposes of plea and trial, must consider the assessment report of the probation officer referred to in section 40 and all evidence placed before the inquiry magistrate or child justice court prior to diversion or conviction, as the case may be, which evidence may include a report of an evaluation referred to in subsection (3); and

(b) the inquiry magistrate or the child justice court must consider the cognitive, moral, emotional, psychological and social development of the child.

(3) An inquiry magistrate or child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitably qualified person[, **which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child**]."; and

(b) by the insertion after subsection (4) of the following subsection:

"(4A) The provisions of section 77(2), (3) and (4) of the Criminal Procedure Act apply with the changes required by the context to a report referred to in subsection (4)."

Amendment of section 56 of Act 75 of 2008

3. Section 56 of the Child Justice Act, 2008, is hereby amended by the addition of the following subsection:

"(4) (a) The Cabinet member responsible for social development may delegate any power or assign any duty conferred on or imposed upon him or her by this section to any member of the Executive Council of a province responsible for welfare services, except the powers and duties referred to in subsection (2)(a).

(b) A delegation or an assignment in terms of paragraph (a)—

- (i) is subject to any limitation, condition and direction that the Cabinet member responsible for social development may impose;
- (ii) must be in writing; and
- (iii) does not divest the Cabinet member responsible for social development of the responsibility concerning the exercise of the power or the performance of the duty.

(c) The Cabinet member responsible for social development may—

- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
- (ii) at any time withdraw a delegation or assignment."

Amendment of section 77 of Act 75 of 2008

4. Section 77 of the Child Justice Act, 2008, is hereby amended—

(a) by the deletion of subsection (2);

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

"(3) A child who is 14 years or older at the time of being sentenced for the offence [, and in respect of whom subsection (2) does not apply,] may only be sentenced to imprisonment, if the child is convicted of an offence referred to in—

- (a) Schedule 3;
- (b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment;
- (c) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment."

- (c) by the substitution for subsection (4) of the following subsection:
 “(4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment—
 (a) for a period not exceeding 25 years; or
 (b) envisaged in section 276(1)(i) of the Criminal Procedure Act.”; and 5
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) A child justice court imposing a sentence of imprisonment must **[antedate the term of imprisonment by]** take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being imposed.”. 10

Amendment of section 78 of Act 75 of 2008

5. Section 78 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) **[Subject to section 77(2), the]** The provisions of section 297 of the Criminal Procedure Act apply in relation to the postponement or suspension of passing of sentence by a child justice court in terms of this Act.”. 15

Amendment of section 97 of Act 75 of 2008

6. Section 97 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) (a) The Cabinet member responsible for the administration of justice must by notice in the *Gazette*— 20
- [(a)] (i)** determine the persons or the category or class of persons who are competent to conduct the evaluation of the criminal capacity of a child referred to in section 11(3); and
- [(b)] (ii)** in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of those persons. 25
- (b) Different categories or classes of persons may be determined for the purposes of the different aspects of development of a child referred to in section 11(2)(b).
- (c) Different allowances and tariffs of remuneration may be determined for the persons referred to in paragraph (a), according to their calling, occupation and stations in life.”. 30

Short title and commencement

7. (1) This Act is called the Judicial Matters Amendment Act, 2014.
 (2) Sections 2, 3 and 6 come into operation on a date fixed by the President by proclamation in the *Gazette*. 35