



Republic of Namibia
Annotated Statutes

Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965

(OG 2614)

brought into force on 1 September 1965 by Proc. 78/1965 (OG 2674)

Section 63 (1) of the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971 states:

“Subject to the provisions of subsections (2) and (3), the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963), is, except in so far as it is necessary for the administration thereof by the Minister of Coloured Affairs in terms of Proclamation No. 57 of 1964, and the Ordinance for the Prevention and Combating of Alcoholism and Anti-social Conduct, 1965 (Ordinance No. 11 of 1965), of the territory, hereby repealed.”

Although this wording may seem at first glance to be somewhat ambiguous, this provision is understood to mean that Act 86 of 1963 is repealed – except insofar as that Act is relevant to the administration of the other two laws cited (Proc. 57 of 1964 and Ord. 11 of 1965). This interpretation is supported by the use of the verb “is....repealed” – which indicates that the provision refers to only a single repealed law – and by the placement of commas in the provision. Thus, it appears that Act 41 of 1973 does *not* repeal this Ordinance as has been assumed in some sources.

ORDINANCE

To provide for the certification of institutions as retreats for certain purposes; for the approval of institutions as hostels for certain purposes; for the committal of certain persons to and their detention in certified retreats, retreats and rehabilitation centres and to provide for other incidental matters.

(Assented to 24th March, 1965)
(English Text signed by the Administrator)

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BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Legislative Assembly by message from the Administrator in accordance with the provisions of section *twenty-six* of the South West Africa Constitution Act, 1925, as amended by section *sixteen* of the South West Africa Affairs Amendment Act, 1949, of the Republic of South Africa, as follows -

Definitions

1. In this Ordinance, unless the context otherwise indicates -

“approved hostel” means a hostel approved under section *five*;

“certified retreat” means an institution certified under section *three*;

“inmate” means any person who under this Ordinance was sent to or admitted to a certified retreat, retreat or rehabilitation centre, and includes any such person who has been released on licence or granted leave of absence from a certified retreat, or who is deemed to have been released on licence from a certified retreat, or who is still under the control or supervision of the management of a certified retreat, or who is liable to be brought back to a certified retreat;

“magistrate” includes an additional magistrate and an assistant magistrate;

“management” in relation to a certified retreat or approved hostel means the persons who have the management or control thereof;

“prescribed” means prescribed by regulation or rule made or prescribed under this Ordinance;

“regulation” means a regulation made and in force under this Ordinance;

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“rehabilitation centre” means a rehabilitation centre established or deemed to have been established under section *three* of the Retreat and Rehabilitation Centres Act, 1963 (Act 86 of 1963), of the Republic of South Africa;

[The Retreat and Rehabilitation Centres Act 86 of 1963 was repealed by the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, which is still in force in Namibia.]

“retreat” means a retreat established or deemed to have been established under section *three* of the Retreats and Rehabilitation Centres Act, 1963 (Act 86 of 1963), aforesaid;

[The Retreat and Rehabilitation Centres Act 86 of 1963 was repealed by the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, which is still in force in Namibia.]

“rule” means a rule prescribed by a management under powers conferred upon it by regulation;

“Secretary” means the Secretary for South West Africa;

“social welfare officer” means an officer who is employed in the professional division in accordance with the laws governing the public service and who, in the performance of his duties, is mainly concerned with welfare work;

“state medical officer” means a registered medical practitioner in the service of the Administration;

“this Ordinance” includes the regulations.

Application of Ordinance in respect of persons

2. No person who has not attained the age of eighteen years shall be committed or transferred, or admitted as a voluntary inmate to a certified retreat, retreat or rehabilitation centre.

Certified retreats

3. (1) If the Administrator is satisfied that an institution is so managed and conducted that it is suitable for the reception, maintenance, treatment and training of persons referred to in paragraph (b) of sub-section (1) of section *seven*, and that the powers conferred by this Ordinance upon the management of a certified retreat, may properly be entrusted to the management of that institution, he may, on the application of the management concerned, and on such conditions as may be prescribed, grant to it a certificate declaring that institution to be a certified retreat under this Ordinance.

- (2) (a) A certificate granted under sub-section (1) may at any time be withdrawn by the Administrator or may be surrendered by the management of the institution in respect of which it was granted.
- (b) Written notice shall be given of the withdrawal or surrender of any such certificate and shall take effect on the date specified in the document whereby notice is given of the withdrawal or surrender.
- (c) Unless the Administrator and the management of the institution in respect of which the certificate was granted agree on the date, the date may not be earlier than a date three months after the date upon which notice of the withdrawal or surrender was given.

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(3) Upon withdrawal or surrender of a certificate under sub-section (2), the powers conferred and the duties imposed by or under this Ordinance upon the management of the certified retreat in respect of any inmate thereof shall devolve upon the Administrator.

Purposes for which persons are detained in certified retreat

4. The inmates of a certified retreat shall be detained therein for the purpose of improving their physical, mental and moral condition by -

- (a) developing and improving their physical condition by means of physical training suited to their particular capacities and needs, and, where necessary, by appropriate medical and mental treatment;
- (b) correcting, under suitable medical, psychiatric, social or psychological supervision, behaviour disabilities, including alcoholism, which impede proper social adjustment;
- (c) the application of any further measures which may be necessary to remove or overcome particular disabilities; and
- (d) generally, training them in habits of social adaptation in the community and of good citizenship.

Approved hostels

5. (1) The Administrator may approve of the establishment or conduct of hostels by associations of persons for the purpose of providing homes for alcoholics undergoing voluntary treatment or inmates who have been released on licence from certified retreats, or who are deemed to have been released on licence from certified retreats or who have been discharged from the provisions of this Ordinance or for persons referred to in section *nine*, and may, on the prescribed conditions, grant to the management of any such hostel a certificate declaring that hostel to be an approved hostel.

(2) The provisions of sub-section (2) of section *three* shall *mutatis mutandis* apply in respect of the withdrawal or surrender of a certificate granted under sub-section (1).

Financial aid for certain institutions and associations of persons

6. (1) The Administrator may, out of moneys appropriated by the Legislative Assembly for the purpose, make grants -

- (a) in respect of the establishment, extension, reconstruction, maintenance, conduct and control of any certified retreat or approved hostel; and
- (b) to any association of persons approved by the Administrator which has as its object the prevention or combating of alcoholism or the treatment of alcoholics or the co-ordination of the activities of different associations of persons in that field.

(2) A grant made under sub-section (1) shall be subject to the prescribed conditions and to the condition that the books, accounts and records of the certified retreat, hostel or association of persons concerned, shall at all times be available for inspection and auditing by any officer in the public service and that a report on the activities of the certified retreat, hostel or association of persons concerned shall once in every calendar year be submitted to the Administrator.

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Procedure for bringing persons eligible for admission to a certified retreat, etc., before a magistrate

7. (1) Whenever there is lodged with or made before a public prosecutor a sworn declaration in writing by any person (including any social welfare officer) alleging that any other person who is within the area of jurisdiction of the magistrate's court to which such prosecutor is attached, is a person who -

- (a) because of his own misconduct or default (which shall be taken to include the squandering of his means by betting, gambling or otherwise) habitually fails to provide for his own support or for that of any dependant whom he is legally liable to maintain; or
- (b) is addicted to drink or drugs and in consequence thereof squanders his means or injures his health or endangers the peace or in any other manner does harm to his own welfare or the welfare of his family; or
- (c) habitually begs for money or goods or induces others to beg for money or goods on his behalf, or
- (d) has no sufficient honest means of livelihood; or
- (e) leads an idle, dissolute or disorderly life;

the clerk of the court shall, at the request of the public prosecutor, issue and deliver to a member of the South African Police a summons to be served on such person calling on him to appear before a magistrate within such area at a time and place stated therein, or if the prosecutor does not request the issue of such a summons a magistrate of the court in question may, on the application of the public prosecutor issue a warrant directing that such person be arrested and as soon thereafter as practicable he brought before a magistrate within such area.

- (2) (a) A public prosecutor shall not, in terms of sub-section (1), request a clerk of the court to issue a summons in respect of any person unless he has obtained from a social welfare officer a report as to the antecedents, way of life and general character of the person concerned and any other relevant matter affecting him.
- (b) A public prosecutor shall not, except in such cases as in his opinion are very urgent, in terms of subsection (1) apply to a magistrate for the issue of a warrant for the arrest of any person unless he has obtained in respect of such person such a report as is referred to in paragraph (a).
- (c) Where such a report was not obtained before the issue of a warrant, the public prosecutor shall obtain it as soon as possible after the issue of the warrant.

(3) All the provisions of the Criminal Procedure Ordinance 1963 (Ordinance 34 of 1963), relating to the form and manner of execution of warrants of arrest, the service of summonses in criminal cases in inferior courts, the arrest, detention, searching and other treatment necessary for the control of persons named in warrants of arrest, the time to be allowed for appearance in the case of any person summoned and the manner in which persons summoned to appear may be dealt with on failure to appear or to remain in attendance as required shall *mutatis mutandis* apply in respect of warrants of arrest and summonses issued under this section.

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(4) For the purposes of paragraph (e) of sub-section (1) a person who does not possess sufficient means to provide for his own needs, or for those of any dependant whom he is legally liable to maintain, shall be deemed to be idle if he is not regularly engaged in remunerated work unless he is prevented from working by illness or mental disorder or by any other circumstance beyond his control.

Committal of persons to certified retreat, retreat or rehabilitation centre after enquiry

8. (1) (a) Subject to the provisions of this section, a magistrate before whom any person is brought in terms of sub-section (1) of section *seven* shall, in the presence of that person, enquire whether he is such a person as is described in that sub-section.
- (b) A public prosecutor, or some other fit and proper person designated by the magistrate concerned, shall appear at the enquiry and such prosecutor or other person may call witnesses and cross-examine witnesses who give evidence at the enquiry.
- (c) The person in respect of whom the enquiry is held, or his legal representative, shall be afforded an opportunity of cross-examining any witness, calling his own witnesses and of giving evidence himself and of showing cause why an order should not be made under subsection (6).

(2) Save as is otherwise provided in this Ordinance, the laws governing criminal trials in magistrates' courts shall *mutatis mutandis* apply in respect of securing the attendance of witnesses at such enquiry, the examination of witnesses, the recording of evidence, the payment of allowances to witnesses and the production of documents and things.

- (3) (a) The proceedings at such an enquiry shall be in open court or *in camera* as the magistrate holding the enquiry may determine.
- (b) The provisions of sub-section (1) of section *one hundred and twenty-nine* of the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963), so far as they relate to the holding of a criminal trial in the absence of an accused person, shall *mutatis mutandis* apply in respect of any enquiry held in terms of this section.

[The Criminal Procedure Ordinance 34 of 1963, with the exception of sections 300(3) and 370, was repealed by the Criminal Procedure Act 51 of 1977.]

- (c) The provisions of section *one hundred and nine* of the Magistrates' Courts Ordinance, 1963 (Ordinance 29 of 1963), shall *mutatis mutandis* apply in respect of proceedings in connection with an enquiry held in terms of this section as if those proceedings were proceedings in a court contemplated in the said section *one hundred and nine*.

[The Magistrates' Courts Ordinance 29 of 1963 was repealed by the General Law Amendment Act 17 of 1970, which made the South African Magistrates' Courts Act 32 of 1944 applicable to South West Africa.]

- (d) Any person who at such an enquiry gives false evidence knowing it to be false, or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.
- (4) The magistrate holding the enquiry -

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- (a) shall, before he makes any order under sub-section (6), direct the public prosecutor or other person appearing at the enquiry in terms of paragraph (b) of sub-section (1) to submit to him the report obtained from a social welfare officer in terms of sub-section (2) of section *seven*; and
- (b) may direct that the person in respect of whom the enquiry is being held be examined by a state medical officer or by a psychiatrist designated by the magistrate and cause all steps (including the use of force) which may be necessary for the carrying out of such examination to be taken and may call upon the state medical officer or the psychiatrist to furnish him with a report showing the results of the examination.

(5) The contents of any report submitted or furnished in terms of sub-section (4) shall be disclosed to the person concerned and he or his legal representative, shall be given an opportunity, if he so desires, of cross-examining the person by whom it was made in relation to any matter arising out of the report and of refuting any allegation contained therein.

(6) If it appears to the magistrate, on consideration of the evidence and of any report submitted or furnished to him in terms of sub-section (4) -

- (a) that the person concerned is such a person as is described in sub-section (1) of section *seven*; and
- (b) that he is a type of person who required and would probably benefit by the training and treatment provided in a certified retreat, retreat or rehabilitation centre; and
- (c) that it would be in his own interest or in the interest of his dependants, if any, or in the interest of the community, that he be detained in a certified retreat, retreat or rehabilitation centre,

he may, subject to the provisions of section *nine*, order that he be detained in a certified retreat, retreat or rehabilitation centre, as the case may be: Provided that if he orders the said person's detention in a retreat or rehabilitation centre he shall fix the period of such detention which shall be not less than one year and not more than three years.

(7) The magistrate may, pending the removal of such person to a certified retreat, retreat or rehabilitation centre, as the case may be, order that such person be detained in custody or released on bail as provided in sub-section (1) of section *ten*.

Postponement of order

9. (1) If it appears to a magistrate at an enquiry under section *eight* that the person in respect of whom the enquiry is being held is such a person as is referred to in sub-section (6) of that section, the magistrate may in his discretion, make an order postponing for a period not exceeding three years, the making of an order in terms of that sub-section and release the person concerned on condition -

- (a) that he shall submit himself to supervision by a social welfare officer;
- (b) that he shall undergo any prescribed treatment; and
- (c) that he shall comply with such prescribed requirements as the magistrate may determine.

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(2) A magistrate of the area in question may, after consideration of a report by a social welfare officer, at any time unconditionally discharge any person in respect of whom the making of an order has been postponed in terms of this section.

(3) Where the making of an order has been postponed for a period of less than three years, a magistrate of the area in question may, after consideration of a report by a social welfare officer, at any time before the expiration of such period make an order extending the period of postponement for such further period, not exceeding the difference between three years and the period for which the making of the order has been postponed, as he may deem fit.

(4) If at the end of the period for which the making of an order has been postponed in terms of this section a magistrate of the area in question is satisfied that the person concerned has observed all the conditions subject to which he was released, the magistrate shall unconditionally discharge him.

- (5) (a) If a person in respect of whom the making of an order has been postponed in terms of this section fails to comply with any of the conditions subject to which he was released, he may, upon the order of a magistrate of the area in question be arrested without warrant by any member of the South African Police or a social welfare officer and any magistrate of the said area may then make an order in terms of sub-section (6) of section *eight* as if the making of such an order had never been postponed.
- (b) Any person arrested in terms of paragraph (a) may be detained in custody in any place referred to in paragraph (a) of sub-section (1) of section *ten* until he can be brought before the magistrate.
- (c) The provisions of sub-section (2) of section *ten* shall *mutatis mutandis* apply in respect of any person detained in custody in a place referred to in the said subsection in terms of paragraph (b).

Temporary custody of persons pending enquiry or removal to certified retreat, retreat or rehabilitation centre

10. (1) (a) A magistrate holding an enquiry under section *eight* may, if he deems it necessary or expedient, postpone or adjourn the enquiry from time to time for periods not exceeding fourteen days at any one time and may, in his discretion, order that, during the postponement or adjournment, the person concerned be detained in custody in a certified retreat, approved hostel, prison, police cell or lock-up or other place regarded by the magistrate as suitable, or be released on bail *mutatis mutandis* as if he were a person whose trial on a criminal charge in a magistrate's court has been postponed or adjourned.
- (b) Pending the removal to a certified retreat, retreat or rehabilitation centre of any person against whom an order has been made under sub-section (6) of section *eight* he may be detained in custody or released on bail as provided in paragraph (a) as if he were such a person as is referred to therein.
- (c) No person shall in terms of this sub-section be detained in custody in a police cell or lock-up for a continuous period of longer than twenty-eight days.

(2) The Administrator may, out of moneys appropriated by the Legislative Assembly for the purpose, contribute towards the maintenance of any person who is, in terms of sub-section (1), detained in a certified retreat, approved hostel or any other place which is not maintained by the State.

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Appeals against and review of certain orders

11. The law relating to appeals and to any form of review in criminal cases shall *mutatis mutandis* apply in respect of any order made under section *eight, nine* or *ten* as if such order were a sentence passed by a magistrate's court in a criminal case.

Period of detention in certified retreat

12. (1) Any person who has been ordered to be detained in a certified retreat under section *eight* shall be so detained for a period of three years as from the date of the order unless he has, prior to the expiration of that period, been discharged or released on licence in terms of any provision of this Ordinance.

(2) The Administrator may, after consultation with the management of the certified retreat in question discharge an inmate from the provisions of this Ordinance at any time prior to the expiration of his period of detention.

Transfer of inmates from certified retreats to retreats and rehabilitation centres

13. (1) Notwithstanding anything to the contrary contained in this Ordinance, the Secretary may after consultation with the management of the certified retreat concerned, and the Minister of State concerned of the Republic of South Africa order the transfer to and the detention in a retreat or rehabilitation centre of an inmate (other than a voluntary inmate) of such certified retreat if in his opinion such inmate is the type of person who will or who will probably benefit by the particular kind of training and treatment provided at the retreat or rehabilitation centre to which he is so transferred.

(2) No person shall be transferred to a retreat or rehabilitation centre in terms of sub-section (1) if the period between the date contemplated for his transfer and the date of expiration of the period for which he is liable to be detained in the said certified retreat is less than one year.

(3) When making an order in terms of sub-section (1) the Secretary shall fix the period of detention of the said inmate in the retreat or rehabilitation centre to which he is to be transferred: Provided that such period of detention together with the period for which such inmate has been detained in the said certified retreat shall not exceed three years.

[The word "with" in the phrase "together with the period..." is misspelt in the *Official Gazette*, as reproduced above.]

Leave of absence from certified retreat

14. The management of a certified retreat may grant to any inmate leave of absence therefrom for such periods and on such conditions as may be prescribed, and may at any time revoke such leave and direct such inmate to return to the said certified retreat.

Inmate of certified retreat may be released on licence

15. (1) The management of a certified retreat may with the approval of the Administrator release an inmate on licence therefrom, subject to the provisions of subsection (2) and to any conditions which it may stipulate, and may at any time vary the conditions of such licence.

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(2) An inmate who has been released on licence shall in accordance with the regulations, remain under the supervision of a social welfare officer or of a society or person approved by the Administrator, for the unexpired portion of the period for which he could have been detained in the said certified retreat: Provided that the Administrator may, after consultation with the management concerned, discharge an inmate from the provisions of this Ordinance at any time prior to the expiration of the period for which he was released on licence.

Revocation of licence

16. (1) (a) If an inmate who has been released on licence fails to comply with any condition of his release on licence, or if, in the opinion of the management concerned, he has not proved capable of adjusting himself properly to the normal life of the community, the inmate's licence may be revoked by the management and he may be recalled to the certified retreat in question: Provided that where the need for recalling an inmate is so urgent that it ought not to be deferred until the management has dealt with the matter the chairman of the management may, after consultation with the head of the certified retreat in question, exercise all the powers of the management under this sub-section.
- (b) An inmate who has in terms of paragraph (a) been recalled to a certified retreat and who does not return thereto without delay may be arrested without warrant by any member of the South African Police, a social welfare officer or member of the staff of any certified retreat authorized thereto by the Administrator and be taken back or returned to the certified retreat from which he was released on licence.
- (c) Any person arrested in terms of paragraph (b) may be detained in custody in any place referred to in paragraph (a) of sub-section (1) of section *ten* until he can be taken back or returned to the certified retreat in question.
- (d) The provisions of sub-section (2) of section *ten* shall *mutatis mutandis* apply in respect of any person detained in custody in a place referred to in the said sub-section in terms of paragraph (c).

(2) Any person recalled to a certified retreat in terms of sub-section (1) who has returned thereto or has been taken back or returned thereto shall be detained therein until the management considers that he is fit once more to be released on licence: Provided that he shall not be detained under this section for a period in excess of the unexpired portion for which he was originally released on licence.

Method of dealing with absconders from certified retreat

17. (1) For the purposes of this section an inmate who has been granted leave of absence from a certified retreat and who on the revocation or expiration of his leave of absence fails to return to the certified retreat from which he was granted such leave and an inmate who without permission absents himself from any hospital to which he may have been admitted at the instance of the management of a certified retreat, shall be deemed to have absconded from the certified retreat from which he was granted leave of absence or from which he was admitted to such hospital.

- (2) (a) An inmate who has absconded from a certified retreat may be arrested without warrant by any member of the South African Police, a social welfare officer or member of the staff of any certified retreat authorized thereto by the Administrator, and shall be brought as soon as may be before a magistrate of the district in which he was arrested.

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(b) Any person arrested in terms of paragraph (a) may be detained in custody in any place referred to in paragraph (a) of sub-section (1) of section *ten* until he can be brought before the said magistrate.

(3) A magistrate before whom any such inmate is brought shall after having enquired into the reasons why the inmate absconded, order that he -

- (a) be returned to the certified retreat or hospital from which he absconded; or
- (b) be detained in custody pending the decision of the Administrator, in any place referred to in paragraph (a) of sub-section (1) of section *ten* designated by the magistrate,

and shall in either case forthwith report to the Administrator the result of his enquiry, and any order which he made under this sub-section.

(4) On consideration of the magistrate's report and after any further enquiry he may deem necessary, the Administrator shall, if the magistrate has ordered that the inmate be detained in custody pending his decision. -

[punctuation as in *Official Gazette*]

- (a) direct that the inmate be returned to the certified retreat or hospital from which he absconded; or
- (b) direct that he be discharged from the provisions of this Ordinance; or
- (c) refer the matter to the Secretary for action to be taken under section *thirteen*: Provided that if the Secretary is of the opinion that the inmate is not the type of person mentioned in sub-section (1) of section *thirteen*, he shall refer the matter back to the Administrator who shall thereupon deal with the inmate in terms of paragraph (a) or (b).

(5) The provisions of sub-section (2) of section *ten* shall *mutatis mutandis* apply in respect of any person detained in custody in a place referred to in the said subsection in terms of paragraph (b) of sub-section (2) or in pursuance of an order made under paragraph (b) of sub-section (3).

- (6) (a) An inmate who in terms of sub-section (1) of section *twenty-eight* of the Retreats and Rehabilitation Centres Act, 1963 (Act 86 of 1963), of the Republic of South Africa is deemed to have absconded from a retreat or rehabilitation centre may be arrested without warrant by any member of the South African Police or a social welfare officer, and shall be brought as soon as may be before a magistrate of the district in which he was arrested.

[The Retreat and Rehabilitation Centres Act 86 of 1963 was repealed by the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, which is still in force in Namibia.]

- (b) Any person arrested in terms of paragraph (a) may be detained in custody in any place referred to in paragraph (a) of sub-section (1) of section *ten* until he can be brought before the said magistrate.
- (c) A magistrate before whom any such inmate is brought, shall, after having enquired into the reasons why the inmate absconded, order that he be returned to the retreat rehabilitation centre or hospital from which he absconded and shall forthwith

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submit a report on his findings and the order which he made under this subsection to the Secretary who shall deal therewith in the prescribed manner.

Admission of voluntary inmate to certified retreat

18. (1) Any person may, either himself or through any other person acting on his behalf, apply in writing to a magistrate of the district in which he resides, for permission to be admitted to a certified retreat as a voluntary inmate.

(2) (a) The application shall be accompanied by a report by a medical practitioner regarding the applicant's general state of health and physical condition: Provided that the magistrate may, if he deems it necessary to do so, require the applicant to furnish him with any other medical or psychiatric report, or may in lieu thereof require him to submit himself to examination by a state medical officer.

(b) If in the opinion of the magistrate it would cause undue hardship if the applicant were to be required to pay the expenses incurred in obtaining any report referred to in the proviso to paragraph (a) he may direct that such expenses be met from public funds.

(3) On receipt of an application in terms of subsection (1) and after any requirement under sub-section (2) has been complied with the magistrate shall -

(a) obtain from a social welfare officer a report as to the antecedents, way of living and general character of the person concerned and any other relevant matter affecting him;

(b) request the applicant to appear before him personally to declare verbally, under oath, why it is necessary that he should be admitted to a certified retreat as a voluntary inmate; and

(c) if requested thereto by any person having an interest in the welfare of the applicant, and may, without having been so requested, call upon any such person to appear before him to show cause why the applicant should not be so admitted to a certified retreat.

(4) If, after the provisions of sub-sections (1), (2) and (3) have been complied with, the magistrate is satisfied that the applicant is such a person as is described in paragraph (b) of sub-section (1) of section *seven* and that he is a type of person who, having regard to all the circumstances, would probably benefit by the training and treatment provided in a certified retreat, the magistrate may, in the prescribed form and subject to such conditions as may be prescribed authorize his admission to a certified retreat.

(5) A person who has been admitted to a certified retreat in terms of sub-section (4), shall be detained as an inmate for such period, not exceeding six months, as the management concerned may at any time determine.

(6) Any such person shall, while he remains an inmate, be subject to all the applicable provisions of this Ordinance.

Inmates to have access to management and vice versa

19. The inmates of a certified retreat shall, subject to the prescribed conditions, have the right of personal access to the management, and the management shall likewise have a similar right of access to the inmates.

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Maintenance of discipline in certified retreats

20. (1) If an inmate of a certified retreat contravenes any regulation or any rule prescribed by the management of such certified retreat under the powers conferred upon it by regulation, the head thereof may -

- (a) take disciplinary steps against that inmate in accordance with the powers conferred upon him and the procedure prescribed by regulation and may impose upon him any punishment prescribed by the regulations for a contravention thereof or of such rules; or
- (b) cause the inmate to be brought before the magistrate's court of the district in which the certified retreat is situated, which court shall have jurisdiction to try the inmate for the alleged offence and to sentence him, in lieu of or in addition to any penalty provided for in the regulations for the offence in question -
 - (i) to imprisonment for a period not exceeding six months; or
 - (ii) to be kept in confinement apart from the other inmates in a place set aside for the purpose at the certified retreat for a period not exceeding thirty days, provided the medical practitioner responsible for the medical care of the inmates concerned has certified that such punishment will in his opinion not be harmful to the health of the inmate.

(2) (a) Whenever the head of a certified retreat has imposed upon an inmate any sentence under paragraph (a) of sub-section (1), the record of the trial shall forthwith be transmitted, together with such remarks as the head of the certified retreat in question may desire to append to the record, and with any written statements or arguments which the inmate sentenced may desire to have so appended, to the clerk of the magistrate's court of the district in which the certified retreat in question is situated.

(b) The said clerk shall forthwith lay the record, together with such remarks, statements or arguments (if any) before the magistrate of the district for his consideration.

(3) The magistrate shall thereupon, if the conviction and sentence appear to be in accordance with justice, endorse his certificate to that effect upon the record and forthwith return the record to the head of the certified retreat in question.

(4) If it appears to the magistrate, on consideration of the papers submitted to him, that the conviction or sentence is not in accordance with justice, he shall set aside or correct the proceedings, and may reduce or vary the sentence, and shall return the record with his instructions thereon to the head of the certified retreat in question.

(5) If an inmate is sentenced under paragraph (b) of sub-section (1) to a term of imprisonment he shall, after the completion of that term, be returned to the certified retreat of which he was an inmate or to any other certified retreat, designated by the Secretary, and such term of imprisonment shall not count as part of his period of detention in the certified retreat.

Estimating of age of person

21. (1) (a) Whenever in connection with any proceedings in terms of this Ordinance the age of any person is a relevant fact of which no or insufficient evidence is available, the officer presiding at those proceedings may estimate the

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age of that person by his appearance or from any information which is available, and the age so estimated shall for the purposes of this Ordinance, be deemed to be the true age of that person.

- (b) If it is proved after the conclusion of those proceedings that the age so estimated is not the true age of that person, the error shall not, if it was made in good faith, affect any decision given or order made in those proceedings.

(2) The age of a person estimated as provided in sub-section (1) shall be deemed to have been attained on the day when the estimate is made.

Witnesses from certified retreat

22. The provisions of section *one hundred and ninety-one* of the Criminal Procedure Ordinance, 1963 (Ordinance 34 of 1963), relating to prisoners shall *mutatis mutandis* apply with reference to an inmate of any certified retreat.

[The Criminal Procedure Ordinance 34 of 1963, with the exception of sections 300(3) and 370, was repealed by the Criminal Procedure Act 51 of 1977.]

Admission of persons to retreats and rehabilitation centres in the Republic of South Africa

23. (1) The Government of the Territory, represented by the Administrator may enter into an agreement with the Government of the Republic of South Africa for the admission to and detention in any retreat or rehabilitation centre of any person who has reached the age of eighteen years whose detention in a retreat or rehabilitation centre for a period of not less than one year has been ordered by a magistrate or the Secretary in terms of any provision of this Ordinance.

(2) The Secretary may authorize the removal of a person ordered to be detained in a retreat or rehabilitation centre by a magistrate, as aforesaid, to a retreat or rehabilitation centre.

- (3) (a) An inmate who has, by virtue of the provisions of section *thirty-five* of the Retreats and Rehabilitations Centres Act, 1963 (Act 86 of 1963), of the Republic of South Africa, been discharged from a retreat or rehabilitation centre, shall, subject to the provisions of paragraph (b), if the period for which he could have been detained in such retreat or rehabilitation centre has not expired, be deemed to have been released on licence from a certified retreat in terms of this Ordinance for the unexpired portion of the period for which he could have been detained in the said retreat or rehabilitation centre.

[The Retreat and Rehabilitation Centres Act 86 of 1963 was repealed by the Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, which is still in force in Namibia.]

- (b) An inmate deemed to have been released on licence in terms of paragraph (a) shall, in accordance with the regulations, remain under the supervision of a social welfare officer or of a society or person approved by the Administrator for the unexpired portion of the period for which he could have been detained in the said retreat or rehabilitation centre: Provided that the Administrator may at any time prior to the expiration of the period for which he is deemed to have been released on licence discharge him from the provisions of this Ordinance or revoke his licence and direct that he be detained in a certified retreat, in which latter case the provisions of paragraphs (b), (c) and (d) of sub-section (1) of section *sixteen*, and, while he is an inmate of such certified retreat, all the applicable provisions of this Ordinance, shall *mutatis mutandis* apply in respect of him: Provided further that he shall not be detained under this paragraph for a period in excess of the unexpired portion of the

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period for which he was originally committed to the said retreat or rehabilitation centre.

[The word “Administrator is misspelt in the *Official Gazette*, as reproduced above. The word “be” is repeated in the phrase which should be “direct that he be detained in a certified retreat”.]

Delegation of Administrator’s and Secretary’s powers

24. (1) The Administrator may delegate to the Secretary or to any other officer of the Administration any of the powers conferred upon him by this Ordinance, save the powers referred to in sub-section (1) of section *twenty-three* or section *twenty-five*.

(2) The Secretary may delegate to any other officer of the Administration any of the powers conferred upon him by this Ordinance.

Regulations

25. (1) The Administrator may make regulations regarding any or all of the following matters -

- (a) the certification of retreats and hostels, the constitution, procedure, functions, powers and duties of boards of management of certified retreats and approved hostels, the books, accounts and records to be kept and the returns and reports to be rendered by such boards of management, and the withdrawal or surrender of certificates granted in respect of such retreats or hostels;
- (b) the conditions subject to which grants may be made to approved associations of persons under section *six*, the books, accounts and records to be kept by such associations and the returns and reports to be rendered by them;
- (c) the committal and admission of persons to certified retreats, retreats or rehabilitation centres;
- (d) the conditions whereon and the periods for which leave of absence may be granted to inmates of certified retreats, and the revocation of such leave of absence;
- (e) the terms and conditions subject to which inmates may be released on licence, the method of supervision of such inmates and the revocation of such licences;
- (f) the matters with regard to which the management of a certified retreat may from time to time prescribe rules for the proper domestic administration and control thereof;
- (g) the maintenance of good order and discipline in certified retreats, and the treatment, training, care and control of the inmates of certified retreats or of persons who are detained therein temporarily in terms of any provision of this Ordinance;
- (h) enabling inmates to practice their religion and the ministers of their respective denominations to have access to them;
- (i) the conditions subject to which inmates shall have the right of access to the management, and *vice versa*;
- (j) the discharge of inmates of a certified retreat from the provisions of this Ordinance;

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- (k) the conditions subject to which voluntary inmates may be admitted to any certified retreat, their transport thereto and their transport therefrom to their homes, the fees payable in respect of their transport, maintenance or other services rendered to them and the circumstances in which such inmates may be exempted from the obligation to pay such fees;
 - (l) the form of any application, authority, certificate, consent, licence, notice or order to be made, given, issued or kept in terms of this Ordinance and any other form required in connection with the administration of this Ordinance;
 - (m) the disposal by sale or otherwise of any property in the possession of the management of any certified retreat belonging to any inmate who has absconded or is in terms of sub-section (1) of section *seventeen* deemed to have absconded, or has died or has failed to claim or receive such property and, where the property has been sold, the disposal of the proceeds of the sale;
 - (n) the requirements referred to in paragraph (c) of sub-section (1) of section *nine*;
 - (o) any matter which, in terms of any provision of this Ordinance, is to be or may be prescribed by regulation;
 - (p) generally, all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Ordinance may be achieved.
- (2) (a) Any regulations made under sub-section (1) may prescribe penalties for any contravention thereof or of any rules prescribed by the management of a certified retreat under powers conferred upon it by regulation.
- (b) Such penalties shall, in so far as they relate to persons who are not inmates, not exceed a fine of one hundred rand, and in so far as they relate to inmates, may take any one or more of the following forms -
- (i) forfeiture of one or more specified privileges for a specified period;
 - (ii) forfeiture of not more than one meal per day for a period not exceeding three days;
 - (iii) separation from the other inmates in a place set aside for the purpose at the certified retreat for a period not exceeding five days.
- (c) If any form of punishment mentioned in subparagraph (ii) or (iii) of paragraph (b) is prescribed, the regulations shall specifically provide that no such form of punishment may be imposed unless the medical practitioner responsible for the medical care of the inmate concerned has certified that such punishment will, in his opinion, not be harmful to the health of that inmate.
- (3) Different regulations may be made under subsection (1) in respect of different certified retreats or different categories of certified retreats, and the Administrator may also in such regulations differentiate in any manner he may deem fit between different groups of inmates in certified retreats generally or in any particular certified retreat.

Short title and commencement

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26. This Ordinance shall be called the Ordinance for the Prevention and Combating of Alcoholism and Antisocial Conduct, 1965, and shall come into operation on a date to be fixed by the Administrator by proclamation in the *Official Gazette*.