

THE POWER OF MERCY BILL, 2021

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SCHEDULE

A Bill for —

AN ACT of Parliament to provide for operationalization of the powers of mercy in Article 133(1)(a) to (d) of the Constitution, to provide for the appointment, tenure of office of the members and the powers and functions of the Power of Mercy Advisory Committee, the National Parole Board and the Mental Health Review Board, and for connected purposes.

ENACTED by the Parliament of Kenya, as follows —

PART I — PRELIMINARY	
Citation.	1. This Act may be cited as the Power of Mercy Act, 2021.
Interpretation.	2. In this Act, unless the context otherwise requires— “acquittal” means a judgment that a person has been found not guilty of the crime with which the person had been charged; “actuarial assessment” means a statistically calculated prediction of the likelihood that an offender will pose a threat to others or engage in a certain behavior; “anonymized” means that personal information that may be used to identify an offender or a victim is removed, redacted or replaced by initials, as appropriate in relation to the nature of the information; “Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to correctional services; “capital offence” means an offence for which the punishment is a sentence of death; “Chairperson” means the chairperson of the Committee provided for under section ***; “Committee” means the Power of Mercy Advisory Committee established in Article 133(2) of the Constitution; “Committee’s decision-making entities” means the secretariat, the National Parole Board and the Mental Health Review Board established under this Act;
No. 10 of 1998	

“community service” means unpaid public work performed by an offender pursuant to the Community Service Orders Act, 1998;

“commutation” includes a grant of mercy that substitutes a less severe punishment for the sentence judicially imposed at the time of conviction for an offence;

“conditional pardon” means the sealing of all records pertaining to an offender’s criminal conviction so that they cannot be accessed in a search of relevant databases, subject to prescribed requirements;

“Constitution” means the Constitution of Kenya, 2010;

“conviction” means imposition of a judgment finding an offender to be guilty of committing an offence;

“correctional facility” has the same meaning as ‘prison’;

“court” means a superior court established under Article 162, or a subordinate court established under Article 169 of the Constitution;

“court martial” means a court established under Article 169(1)(c) of the Constitution;

“custodial sentence” means the punishment of imprisonment;

“custody” means the deprivation of liberty by a law enforcement or corrections official in a jail, prison or other place of confinement, by order of a judicial authority or otherwise according to law;

“decision-making entities” includes the –

- (i) National Parole Board;
- (ii) Mental Health Review Board;
- (iii) Review Sub-Committee; and
- (iv) Power of Mercy Case Managers and staff of the Secretariat responsible for making administrative decisions regarding pardon, remission and commutation;

“detain” or “detention” means the lawful deprivation of liberty for any length of time, and includes custody in a prison or mental health

facility;

“dependent” in relation to an offender means a person who wholly or substantially relies on the offender for subsistence;

“determinate sentence” means a custodial sentence that ends after a prescribed period of time;

“expunge” and “expungement” means removed fully and permanently sealed or destroyed;

“felony” means any offence which is declared by law as such and which is punishable by death or by imprisonment for three years or more;

“free pardon” means the expungement of all records pertaining to an offender’s criminal conviction so that they are destroyed or otherwise rendered permanently inaccessible for the purpose of a criminal record check;

“imprisonment” means to be kept in custody in a prison as punishment imposed according to law upon conviction for an offence;

“indeterminate” and “indefinite” mean lasting for an unknown or unstated length of time;

“legal representative capacity” in respect of an offender means a person who has been appointed by a court to make decisions on behalf of the offender;

“life imprisonment” means a sentence of imprisonment for the indeterminate period that ends when the offender dies;

“mercy” means compassion or forgiveness shown towards an offender by a person who has the authority to vary a punishment;

“mental health facility” means a place for the reception and in-patient treatment of a person having any mental or psychological impairment, condition or illness, and includes a mental hospital established pursuant to the Mental Health Act for the custody, treatment or assessment of an

offender with mental illness;

“misdemeanour” means any offence that is not a felony;

“national interest” means in the interest of international relations, or to save human lives;

“non-custodial sentence” means any punishment other than imprisonment or death;

“normal eligibility” means, in relation to parole, the day after which the offender has served two thirds of the prescribed sentence;

“offence” means an act or omission that caused harm to a victim and that constituted a criminal offence under any written law in force at the time of the act or omission;

“offender” means any person who has been charged with a criminal offence, brought before a court of law or court martial for that offence, and –

- (i) stood trial and found guilty of that offence, and sentenced to punishment; or
- (ii) found to be guilty of the act or omission charged but insane when the act was committed or the omission made, pursuant to section 166 Criminal Procedure Code (Cap. 75); or
- (iii) found to be guilty but unable to understand the proceedings, pursuant to section 167 of the Criminal Procedure Code (Cap. 75); or
- (iv) found to be guilty of a capital offence committed while the person was under the age of eighteen years, pursuant to section 25 of the Penal Code (Cap. 63);

“pardon” is a grant of mercy that allows an offender who has completed their sentence and demonstrated that they are a law-abiding citizen for a prescribed number of years, to have all records pertaining to their criminal conviction be kept separate and apart from other records;

“parole” is a grant of mercy that postpones or suspends the execution

<p>No. 31 of 2016.</p>	<p>of a sentence of imprisonment, either for a specified or indefinite period of time, and releases the offender with authority to serve the remainder of the sentence at liberty, subject to any conditions that may be imposed;</p> <p>“Parole Board” means the National Parole Board established in section 30;</p> <p>“parolee” means an offender who has been granted parole in accordance with this Act;</p> <p>“person with a disability” means any person having any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual’s ability to carry out ordinary day-to-day activities;</p> <p>“personal information” has the same meaning as in the Access to Information Act, 2016;</p> <p>“petitioner” means any person who makes an application for the power of mercy;</p> <p>“power of mercy” means the four avenues of mercy provided for in Article 133(1) of the Constitution of Kenya, 2010 and granted pursuant to this Act, being –</p> <ul style="list-style-type: none">(i) pardon;(ii) parole;(iii) commutation; and(iv) remission; <p>“President” means the President of the Republic of Kenya;</p>
<p>Cap. 90.</p>	<p>“President’s Pleasure” means detention of an offender for an indeterminate period of time pursuant to sections 166 or 167 of the Criminal Procedure Code (Cap. 75), or section 25 of the Penal Code (Cap. 63);</p>
<p>Cap. 64.</p>	<p>“prison” means a place used to detain persons who are in the lawful custody of the State, and which is designated as a prison pursuant to the</p>

Prisons Act (Cap. 90);

“probation” means the conditional release of an offender pursuant to the Probation of Offenders Act;

“prosecutor” means a person who is employed or otherwise engaged by the Office of the Director of Public Prosecutions to prosecute offences in accordance with the Criminal Procedure Code (Cap. 75);

“punishment” means the imposition of a penalty as retribution for an offence, and includes the punishments provided for in Chapter VI of the Penal Code (Cap. 63), a probation order made pursuant to the Probation of Offenders Act, and a community service order made pursuant to the Community Service Orders Act;

“recidivism” means the tendency of an offender to re-offend;

“rehabilitation” means the process of assisting an offender to mitigate recidivism and includes psychosocial interventions, medical treatment, social services and other measures designed to assist an offender to reintegrate back into society as a law-abiding person;

“reintegration” means the action or process of integrating someone back into society;

“remand” means committal to custody pending bail, trial or sentencing;

“remission” is a grant of mercy that allows an offender to be released from imprisonment on the basis of good conduct, with the effect that all or part of the punishment is cancelled;

“Review Board” means the Mental Health Review Board established in section 56;

“sentence” means the punishment judicially imposed on a person convicted of a crime;

“two thirds gender principle” means that no more than two-thirds of the members of public representative bodies shall be of the same gender;

“victim” means any natural person who, individually or together with one or more persons, suffered harm in the form of physical, mental or

	<p>emotional injury, pecuniary loss, or substantial violation of human rights as a consequence of an offence, and includes the victim’s family in the event that the victim is deceased;</p> <p>“victim impact statement” means a statement by the victim, or where incapacitated or otherwise unable, the victim's representative, on the psychological, emotional, physical, economic or social impact of the offence committed against the victim and includes any recording, summary, transcript or copy thereof;</p> <p>“vulnerable offender” means an offender who is –</p> <ul style="list-style-type: none"> (i) female with a child under the age of 2 years or who is pregnant; (ii) over the age of 60 years; (iii) terminally ill; or (iv) permanently disabled. <p>“wrongful conviction” means that an offender has been subsequently found by a court to be innocent of the offence for which the person was originally found to be guilty; and</p> <p>“young offender” means a person convicted of an offence committed before the person reached the age of 18 years.</p>
Purpose	<p>3. The purpose of this Act is to give effect to Article 133 of the Constitution, and to provide for—</p> <ul style="list-style-type: none"> (a) the operationalization of the power of mercy set out in Article 133(1); (b) the appointment and tenure of members of the Power of Mercy Advisory Committee; (c) establishment of a National Parole Board to carry out the function of making decisions related to parole; (d) establishment of a Mental Health Review Board to review the indeterminate detention of persons serving at the President’s Pleasure pursuant to sections 166 or 167 of the Criminal Procedure Code; (e) victim participation, transparency and accountability in the implementation and administration of the power of mercy; and (f) any other matter necessary to give effect to Article 133 of the Constitution.
Guiding principles.	<p>4. A person performing any function under this Act shall respect and</p>

uphold the values and principles in the Constitution and in particular be guided by the provisions of Articles 10 and 232, and Chapters Four and Six of the Constitution and, without in any way limiting the foregoing shall—

- (a) reduce the use of imprisonment through consideration at the earliest possible stage of any form of release to a non-custodial sentence, ensuring a proper balance between the need for proportionate post-sentencing dispositions consistent with the nature and gravity of the offence, the character, background and rehabilitation needs of the offender, the rights of victims and the concern for public safety and prevention of recidivism;
- (b) promote greater community involvement in the administration of criminal justice, specifically in the treatment of offenders;
- (c) promote among offenders of a sense of responsibility towards society;
- (d) impose conditions, including supervision and treatment, and provision of social support, determined individually for each offender, aimed at assisting the offender's successful rehabilitation and reintegration;
- (e) observe, respect, protect, promote and fulfil human rights and social justice including –
 - (i) the dignity of the offender;
 - (ii) the right to privacy of the offender, the victim(s) and their families;
 - (iii) the right of offenders to be equal before the law and to equal protection and equal benefit of the law;
 - (iv) the right of all persons to be free from discrimination on the grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth;
 - (v) the right of all persons to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, and the right to be given written reasons for the action; and
 - (vi) the right of an offender to petition for an order of *habeas corpus*;
- (f) adhere to the principles of good governance in operationalisation of the power of mercy, including upholding the rule of law, and ensuring independence, accountability and transparency of decision-making; and

	<p>(g) promote access to information by the public on the processes and outcomes of decision-making under this Act, while at the same time maintaining strict confidentiality of information that may endanger the safety, health or life of any person or involve the unwarranted invasion of the privacy of an individual.</p>
	<p>PART II — POWER OF MERCY ADVISORY COMMITTEE</p>
<p>Establishment of the Committee</p>	<p>5. (1) There is established the Power of Mercy Advisory Committee established in Article 133(2) of the Constitution shall be an unincorporated body comprised of the following persons —</p> <ul style="list-style-type: none"> (a) the Attorney General who shall be the chairperson; (b) the Cabinet Secretary responsible for correctional services; and (c) seven (7) other members appointed by the President who are not State officers or in public service, including – <ul style="list-style-type: none"> (i) one representative of civil society organizations or agencies that provide rehabilitation and reintegration support to offenders within or outside of prison facilities; (ii) at a minimum, one person with training and expertise in provision of mental health support services; (iii) at a minimum, one person who is a person with a disability, or in the alternative a representative of the National Council for Persons With Disabilities; and (iv) one former offender who has completed their sentence and has been granted or is eligible to receive a pardon under this Act, or in the alternative, one representative of an organization or agency that advocates for the interests of offenders. <p>(2) The headquarters of the Committee shall be in Nairobi but the Committee shall ensure access to its services in all parts of the Republic, and in particular shall ensure access by offenders through the Power of Mercy Case Managers appointed in accordance with section ***.</p> <p>(3) For the purpose of coordination of national executive functions, the Committee shall be situated within the Office of the President.</p>
<p>Qualification for Appointment as a Member</p>	<p>6. (1) Without limiting the requirements of subsection 5(1)(c), and except for any person appointed in accordance with subsection 5(1)(c)(iv), a person is qualified for appointment as a member of the Committee if the person—</p> <ul style="list-style-type: none"> (a) is a citizen of Kenya;

	<p>(b) possesses a degree from a university recognized in Kenya, or has at least ten years proven knowledge and experience, in any of the following fields—</p> <ul style="list-style-type: none">(i) law;(ii) psychiatry;(iii) social work;(iv) correctional services;(v) human rights; or(vi) governance; and <p>(c) meets the requirements of Chapter Six of the Constitution.</p> <p>(2) A person shall not be qualified for appointment as a member of the Committee if the person—</p> <ul style="list-style-type: none">(a) is a member of a governing body of a political party;(b) is an undischarged bankrupt;(c) except for any person appointed in accordance with subsection 5(1)(c)(iv), has been convicted, whether in Kenya or elsewhere, of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;(d) is unable to perform the functions of office due to mental incapacity; or(e) has been removed from public office for contravening the provisions of the Constitution or any other law.
Selection Panel	<p>7. (1) The President shall, by notice in the Gazette, constitute a selection panel comprised of –</p> <ul style="list-style-type: none">(a) a chairperson, who shall not be a State officer or public officer, appointed by the President;(b) the Principal Secretary in the Ministry for the time being responsible for correctional services or his or her representative appointed in writing;(c) the Commissioner of Prisons or his or her representative appointed in writing;(d) a representative of the Office of the President;(e) a representative of the Judiciary;(f) the Director of Probation and Aftercare Services or his or her representative appointed in writing;(g) a representative of the Kenya National Commission for Human Rights;(h) a representative of the National Gender and Equality Commission;

	<p>(i) a representative of a joint forum of religious organizations comprised of –</p> <ul style="list-style-type: none"> (i) the Supreme Council of Kenya Muslims; (ii) the Kenya Episcopal Conference; (iii) the National Council of Churches of Kenya; (iv) the Evangelical Fellowship of Kenya; and (v) the Hindu Council of Kenya. <p>(2) A vacancy in the selection panel arising after it has been constituted shall be filled within seven days by the nominating body.</p> <p>(3) The selection panel shall serve on an <i>ad hoc</i> basis any time a vacancy arises in the membership of the Committee, the National Parole Board or the Mental Health Review Board.</p> <p>(4) The quorum of the selection panel shall be five members.</p> <p>(5) Subject to subsection (4), section 8 and Article 232 of the Constitution, the selection panel shall regulate its own procedure.</p>
<p>Procedure for Appointment of Committee Members</p>	<p>8. (1) Within two days of a vacancy arising in the membership of the Committee, the selection panel shall, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for appointment as members of the Committee under this Act.</p> <p>(2) The selection panel shall—</p> <ul style="list-style-type: none"> (a) consider the applications received under subsection (1) to determine their qualification in accordance with the provisions of the Constitution and this Act; (b) short list the applicants; (c) publish the names of the shortlisted applicants in at least two daily newspapers of national circulation; (d) conduct interviews of the shortlisted applicants in a process that is open to the public; and (e) recommend to the President a sufficient number of suitably qualified persons to ensure that the President has choice in appointing members in accordance with subsection 5(1)(c) and subsection (4) below. <p>(3) Within seven days of receipt of the list of persons nominated by the selection panel under subsection (2) the President shall, by notice in the <i>Gazette</i> –</p>

- (a) appoint seven members of the Committee; and
 - (b) in accordance with Article 132(3)(b) of the Constitution and section 7 of the National Government Co-ordination Act, 2013, assign through the Cabinet Secretary responsible for correctional services, the responsibility of discharging the executive function of exercising the power of mercy under Article 133 of the Constitution to the members of the Committee.
- (4) In recommending and appointing members of the Committee, the section panel and the President shall –
- (a) have regard to ethnic and regional diversity of the people of Kenya; and
 - (b) ensure that the full membership of the Committee is in compliance with the two thirds gender principle.
- (5) Members of the Committee appointed under this section shall serve on a part-time basis for a single term of five years.
- (6) Before assuming office, members of the Committee shall, before the Chief Registrar, each make and subscribe to an oath or affirmation prescribed in the Regulations.
- (7) Apart from a vacancy arising at the expiry of a Committee member's term, the office of a Committee member appointed in accordance with this section shall become vacant and filled in accordance with this section if the holder—
- (a) dies;
 - (b) resigns from office by notice in writing addressed to the President;
 - (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
 - (d) is absent from three consecutive meetings of the Committee without good cause;
 - (e) is adjudged bankrupt;
 - (f) is found guilty of gross misconduct; or
 - (g) is unable to perform any of the functions of the office without reasonable accommodation.
- (8) A person appointed to fill a vacancy pursuant to subsection (7) shall serve the remainder of the term of the person who vacated the position, and shall not be eligible for reappointment unless the remainder of the term is less than two years.

Conduct of Affairs of the Committee

9. (1) Within seven days of appointment of Committee members in accordance with section 8(3), the Chairperson shall convene the first meeting of the Committee at which the members shall elect the vice chairperson of the Committee from amongst the members appointed in accordance with section 8. The chairperson and vice chairperson shall not be of the same gender.
- (2) Subject to the provisions of subsection (3), the Committee shall hold at least six meetings in every financial year and not more than three months shall lapse between one meeting and the next meeting. Unless three quarters of the members otherwise agree, at least seven days' notice of a meeting shall be given to every member.
- (3) The chairperson may at any time convene a special meeting of the Committee after receipt of at least fourteen day written notice by at least two other members.
- (4) The Committee may invite a person to attend any of its meetings and to participate in its deliberations, but such a person shall not have a vote in any decision of the Committee.
- (5) The quorum of a meeting of the Committee shall be five members.
- (6) A decision of the Committee shall be by a majority of the members present and voting, and in the case of an equality of votes the person presiding at the meeting shall have a second or casting vote.
- (7) The Committee may from time to time establish sub-committees for the better carrying out of its functions.
- (8) The Committee may co-opt into the membership of a sub-committee established under sub-section (7), any person whose knowledge and skills are considered necessary and relevant to the purpose for which the committee is established.
- (9) A person co-opted into a sub-committee may attend the meetings of the sub-committee and participate in its deliberations, but shall not vote.
- (10) Except as provided for in this section, the Committee may regulate

	<p>its own procedure.</p> <p>(11) A vacancy in the Committee shall not affect the proceedings and decisions of the Committee.</p>
Review Sub-Committee	<p>10. (1) Despite sub-section 9(6), the Committee shall establish a Review Sub-Committee, comprising of at least three members of the Committee, responsible for internal review of administrative decisions of the Committee’s decision-making entities.</p> <p>(2) A person aggrieved by a decision of the Committee may, before applying for judicial review, file a complaint with the Review Sub-Committee to have the decision-making process reviewed to ensure compliance with the procedural requirements set out in this Act for each decision-making entity.</p> <p>(3) Without limiting 10(2) , the procedural requirements include consideration of all relevant eligibility criteria for the respective power of mercy, and all information submitted by persons who participated in the process.</p> <p>(4) A request for review shall be in writing, and shall include detailed reasons why, in the opinion of the person filing the request, the requirements of procedural fairness were not met in all the circumstances.</p> <p>(5) Within sixty days of receipt of a request for review, the Review Sub-Committee shall inquire into the matter and, having regard to all of the circumstances, may –</p> <ul style="list-style-type: none">(a) invite written submissions from any person who may have relevant information pertaining to the review; or(b) hold an informal hearing. <p>(6) For greater clarity, the Review Sub-Committee’s power on review is restricted to ensuring that the requirements of procedural fairness were met, and does not extend to review of the substantive decision.</p> <p>(7) If the Review Sub-Committee determines that the requirements of procedural fairness have been met, the decision will be affirmed.</p>

	<p>(8) If the Review Sub-Committee determines that any aspect of the process was not fair to any person, it shall direct the relevant decision-making entity to do anything that may be required to rectify the issue, including holding another hearing if necessary.</p> <p>(9) The Review Sub-Committee shall give reasons in writing for its decision, and shall provide a copy to the person who requested the review, the relevant decision-making entity, and any other person who participated in the review.</p>
Functions of the Committee	<p>11. (1) In addition to the functions set out in Article 133(1) and (4) of the Constitution, the Committee shall—</p> <ul style="list-style-type: none">(a) undertake or commission research and collect data on matters relating to the power of mercy, including periodically following up on offenders who have been granted mercy to assess their progress for the purpose of reviewing the Committee’s procedures and processes, including those of its decision-making entities;(b) work with State organs responsible for correctional services to<ul style="list-style-type: none">(i) educate offenders and persons in correctional services on the power of mercy and procedures relating to applications for its exercise;(ii) carry out any necessary investigations required to make a determination on an application for exercise of the power of mercy;(iii) coordinate and facilitate the rehabilitation and reintegration of offenders who have been granted mercy under this Act;(c) partner with State and non-state actors to educate the public on the nature and implications of the power of mercy;(d) monitor, evaluate and publicly report on the efficacy of all activities related to the power of mercy, including the procedures and processes of the Committee and its decision-making entities;(e) undertake such other activities as may be necessary for the discharge of its functions and the exercise of its powers; and(f) carry out any other function as may be conferred on it under any other written law.

	<p>(2) Except as provided for under this Act, the Committee shall, in the performance of its functions, not be subject to the direction or control of any person or authority.</p>
Powers of the Committee	<p>12. (1) The Committee shall have all powers necessary for the execution of its functions under the Constitution and this Act.</p> <p>(2) Despite subsection (1), in the performance of its functions, the Committee—</p> <p>(a) may, subject to this Act, determine its procedures including those of its decision-making entities;</p> <p>(b) shall, where appropriate, receive written or oral submissions from –</p> <p>(i) offenders who have applied for an exercise of mercy, or their chosen representative;</p> <p>(ii) any victim of an offender who has applied for an exercise of mercy, or their chosen representative;</p> <p>(iii) any other person who may have information relevant to an application for an exercise of mercy under this Act; and</p> <p>(c) is not bound by the strict rules of evidence.</p> <p>(3) The Committee may, and as appropriate shall, by resolution delegate to any decision-making entity established under this Act, or to any member, officer, employee or agent of the secretariat, the exercise of any of the powers or the performance of any of the functions or duties of the Committee under this Act.</p>
Remuneration of Committee Members	<p>13. Members of the Committee shall be paid such allowances as may be determined by the Office of the President with the approval of the Salaries and Remuneration Commission.</p>
Appointment of the Secretary	<p>14. (1) There shall be a Secretary to the Committee who shall be a public officer competitively recruited by the Committee in consultation with the Public Service Commission, and appointed by the President.</p> <p>(2) The Secretary shall be the Chief Executive Officer of the Committee.</p>
Qualifications of the Secretary	<p>15. A person shall be qualified for appointment as Secretary if the person—</p> <p>(a) is a citizen of Kenya;</p> <p>(b) holds a graduate degree from a recognized university in any of the following fields —</p>

	<ul style="list-style-type: none"> (i) law; (ii) correctional services; (iii) human rights; (iv) economics; or (v) public administration; <ul style="list-style-type: none"> (c) has at least five years' proven experience at management level; (d) has relevant experience in any aspect of correctional services or the power of mercy; and (e) meets the requirements of Chapter Six of the Constitution.
<p>Term of office, remuneration and removal of Secretary</p>	<p>16. (1) The Secretary shall hold office for a term of three (3) years on such terms and conditions as the Committee may determine in consultation with the Public Service Commission, and shall be eligible for re-appointment for one further and final term.</p> <p>(2) The Committee shall determine the remuneration of the Secretary in consultation with the Salaries and Remuneration Commission.</p> <p>(3) The Secretary may be removed from office in accordance with the terms and condition of service, for —</p> <ul style="list-style-type: none"> (a) inability to perform functions of the office arising out of physical or mental incapacity; (b) gross misconduct, whether in the performance of the functions of the office or otherwise; (c) incompetence or negligence of duty; (d) violation of the Constitution or any other written law; or (e) any other grounds specified in the terms and conditions of service. <p>(4) Where a decision is taken to remove the Secretary from office in accordance with sub-section (3), the Committee shall—</p> <ul style="list-style-type: none"> (a) inform the Secretary in writing of the reasons for the intended removal; and (b) provide the Secretary with an opportunity to be heard in accordance with the principles of fair administrative action prescribed by Article 47 of the Constitution.
<p>Functions of the Secretary</p>	<p>17. (1) The Secretary shall be —</p> <ul style="list-style-type: none"> (a) the Chief Executive Officer of the Committee; (b) the Accounting Officer of the Committee; (c) the Registrar of the National Parole Board; (d) the Registrar of the Mental Health Review Board;

	<p>(e) responsible to the Committee for overseeing operationalization of the power of mercy in accordance with this Act, including —</p> <ul style="list-style-type: none">(i) implementing the policy direction and decisions of the Committee;(ii) the day-to-day administration and management of the affairs of the Committee, including supervision of the Secretariat;(iii) ensuring that procurement of goods and services, and disposal of assets, by the Committee is carried out in accordance with Article 227 of the Constitution and the law relating to public procurement and disposal of goods;(iv) preparing and submitting financial and quarterly reports to the Committee; and(v) performing such other duties as may be assigned by the Committee.
Establishment of the Secretariat	<p>18. (1) There shall be a Secretariat of the Committee comprised of such professional, technical and administrative officers and support staff, as may be competitively recruited by the Committee, for the effective discharge of the functions of the Committee under this Act.</p> <p>(2) The Secretary, shall, in consultation with the Committee and the Public Service Commission, engage members of staff in accordance with this Act, on such terms and conditions as are necessary and appropriate.</p> <p>(3) In the recruitment and appointment of the staff of the Secretariat, the Committee shall ensure—</p> <ul style="list-style-type: none">(a) equal opportunity for marginalized communities;(b) that not more than two thirds of its staff are of the same gender;(c) that the staff reflects the ethnic and regional diversity of the people of Kenya; and(d) that the staff have the skills and training necessary to carry out the functions of the Committee, including engaging with offenders, the public and other stakeholders, in accordance with the guiding principles in section 4 of this Act. <p>(4) The Committee shall ensure that staff of the Secretariat embody and uphold the values and principles of public service set out in Article 232 of the Constitution.</p>

	<p>(5) Public officers may, upon request by the Committee, be seconded from any national government departments or agencies.</p> <p>(6) A public officer seconded to the Committee shall, during the period of secondment, be deemed to be an officer of the Committee and shall be subject only to the direction and control of the Committee.</p>
Functions of the Secretariat	<p>19. (1) The Secretariat shall work with all stakeholders, including the Committee, relevant national and county government departments and agencies, other relevant public entities at national and county level, the private sector and the public, to give effect to Article 133 of the Constitution and this Act, including—</p> <ul style="list-style-type: none">(a) providing technical advice on, and strategic coordination of all activities related to exercise of the power of mercy;(b) receiving and processing applications for exercise of the power of mercy, including carrying out any necessary investigations required to make a determination on an application for exercise of the power of mercy;(c) providing support to the Committee’s decision-making entities to ensure the timely, transparent and accountable exercise of their functions;(d) providing support to State organs responsible for correctional services to –<ul style="list-style-type: none">(i) educate offenders and persons in correctional services on the power of mercy and procedures relating to applications for its exercise;(ii) coordinate and facilitate the rehabilitation and reintegration of offenders who have been granted mercy under this Act;(e) sensitizing, and providing access to information by the public on the power of mercy;(f) conducting research and collecting data on matters relating to the power of mercy, including periodically following up on offenders who have been granted mercy to assess their progress for the purpose of reviewing the Committee’s procedures and processes, including those of its decision-making entities;(g) monitoring, evaluating and publicly reporting on the efficacy of all activities related to the power of mercy, including the procedures and processes of the Committee and its decision-making entities; and

	<p>(h) any other function as directed by the Secretary or the Committee.</p> <p>(2) The Secretariat shall consult with the Committee as may be necessary and appropriate in carrying out its functions pursuant to the guiding principles in section 4 of this Act and any regulations made in accordance with section ***.</p>
Units of the Secretariat	<p>20. The Secretary, shall, in consultation with the Committee, designate such units or officers in the Secretariat sufficient to allow for effective execution of the Committee’s mandate, including—</p> <ul style="list-style-type: none"> (a) undertaking administrative decisions on petitions for pardon, including coordinating with the Office of the President as necessary; (b) coordinating with Power of Mercy Case Managers in prison and mental health facilities to process offenders who are eligible for remission, parole and mental health dispositions; (c) supporting the decision-making processes of the National Parole Board and the Mental Health Review Board, including through provision of technical support and advice; (d) coordinating with Power of Mercy Case Managers, the Judiciary and Probation and AfterCare Services in undertaking commutations and facilitating post-release supervision and other rehabilitation and reintegration supports; (e) conducting research and collecting data on matters relating to the power of mercy; and (f) undertaking public and stakeholder sensitization on the power of mercy, and facilitating access to information in accordance with the Access to Information Act, 2016.
Experts and Consultants	<p>21. The Secretary may, in consultation with the Committee, and in accordance with the law relating to public procurement and disposal of goods, contract the services of such experts or consultants as the Committee deems relevant and necessary for the efficient and effective operationalization of the power of mercy.</p>
Power of Mercy Case Managers	<p>22. (1) For the purpose of this Act, the Cabinet Secretary for correctional services shall, by notice in the Gazette, appoint Power of Mercy Case Managers, who shall be public officers seconded to the Committee and stationed at correctional facilities, and mental health facilities where offenders are in custody.</p> <p>(2) A person shall be qualified for appointment as a Power of Mercy</p>

Case Manager, if the person—

- (a) is a citizen of Kenya;
- (b) holds a Bachelor's degree in from a recognized university in any social sciences;
- (c) has at least five years' professional experience in the relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) Power of Mercy Case Managers shall report directly to the Committee on all matters related to the power of mercy.

(3) The duties and responsibilities of the Power of Mercy Case Manager in each correctional facility include –

- (a) identifying and maintaining a register of offenders who are eligible to benefit from the power of mercy, or are subject to mental health review;
- (b) collecting and analysing information and data to facilitate the prioritization of vulnerable offenders for purposes of full pardons and commutations, including identifying offenders with disabilities, offenders who are sole caretakers/providers for dependent children, terminally ill offenders and offenders who are over the age of 60;
- (c) sensitizing offenders on the relevant process(es) for which they are or may become eligible, and assisting offenders in the preparation of applications for the power of mercy;
- (d) facilitating the gathering of information and preparation of all reports that are integral to the Committee's decision-making processes, including liaising with Officers in Charge, Welfare/Medical Officers, Catechists, Documentation Officers, Officers responsible for Industry, Judiciary Registrars, law enforcement officers, Probation Officers, Parole Officers, mental health workers and any other relevant actor, to ensure preparation of comprehensive reports including Prison Reports, Parole Reports, Parole Risk Assessments, Behavioural Risk Assessments, Mental Health Reports and Probation Reports;
- (e) liaising with the Secretariat to coordinate and facilitate hearings of the Committee's decision-making entities for offenders who have applied for the power of mercy or are subject to mental health review;
- (f) coordinating with Parole and Probation Officers to identify

	<p>victims and community members and sensitize them on the relevant process and potential outcomes in relation to individual offenders who have applied for the power of mercy or are subject to mental health review;</p> <ul style="list-style-type: none"> (g) protecting the privacy of personal information of offenders and their families, and victims and their families; (h) liaising with the Victim Protection Board to facilitate participation of victims in parole hearings; (i) at least every three months, submitting a report to the Committee on the activities undertaken relating to implementation of this Act in the correctional or mental health facility; and (j) any other duty as may be assigned by the Secretary or the Committee. <p>(4) Power of Mercy Case Managers shall be stationed at the correctional or mental health facility for a minimum of three years before being transferred to another facility, to enable the officer to gain sufficient knowledge of the offenders in that facility so as to provide efficient and effective coordination of the power of mercy for those offenders.</p>
<p>Establishment of Power of Mercy Case Management Committees</p>	<p>23. (1) There is established in each correctional facility, a Power of Mercy Case Management Committee comprising –</p> <ul style="list-style-type: none"> (a) the Power of Mercy Case Manager; (b) the prison Welfare Officer; and (c) a Parole/Probation Officer. <p>(2) The Committee shall be responsible for –</p> <ul style="list-style-type: none"> (a) gathering information and preparing Prison Reports, Parole Reports and Parole Risk Assessments; (b) identifying victims and community members and sensitizing them on the relevant process and potential outcomes in relation to individual offenders who have applied for the power of mercy; (c) liaising with the Victim Protection Board to facilitate participation of victims in parole hearings; and (d) promoting and facilitating, in consultation with offenders’ families, local communities and rehabilitation support providers, the reintegration of offenders who are released in accordance with this Act.
<p>Power of Mercy Petition Process</p>	<p>24. (1) Subject to subsection (2), an offender may petition for the power of mercy if they meet the eligibility criteria for the respective power of</p>

	<p>mercy as set out in this Act.</p> <p>(2) The power of mercy is not available to an offender who is currently serving a period of probation or a suspended sentence, or who has a pending application for judicial remedy before a court.</p> <p>(3) The process of petitioning for the exercise of power of mercy shall be by submission of the prescribed form, and meeting the eligibility criteria set out in this Act for the respective power of mercy, including provision of supporting documents, except for initial review by the Mental Health Review Board which shall be initiated through referral by a court having found an offender to be guilty but insane or unable to understand the proceedings.</p> <p>(4) Petitions may be filed by the offender, an advocate or any other person on behalf of the offender, or by the Power of Mercy Case Manager in a correctional or mental health facility. A petition that provides the requisite information shall not be incompetent only for the reason that it does not accord strictly with the prescribed format.</p> <p>(5) Petitions may be submitted through the Power of Mercy Case Manager stationed in a correctional or mental health facility, or may be submitted directly to the Committee in person, or by mail or email to the Committee.</p> <p>(6) Upon receipt of a petition, the Power of Mercy Case Manager in a correctional or mental health facility, or the Secretariat as applicable, shall determine the eligibility and admissibility of the petition in accordance with the criteria for the respective power of mercy as set out in this Act.</p> <p>(7) Once a petition has been reviewed and determined to be eligible and admissible, the Committee shall notify the Petitioner in writing of the acceptance of the petition, including its assigned unique case file number, and of the next steps to be taken in processing the application, including the expected timeline.</p>
	<p>PART III — PARDON</p>
<p>Meaning of Pardon</p>	<p>25. (1) A ‘pardon’ for the purpose of Article 133(1)(a) of the Constitution and this Act allows an offender who has completed their sentence and demonstrated that they are a law-abiding citizen for the prescribed</p>

	<p>number of years, to have all records pertaining to the offender’s criminal conviction be kept separate and apart from other records.</p> <p>(2) The effect of a pardon shall be that a search for records pertaining to the offender’s criminal conviction will not show that the individual has a criminal arrest, charge, conviction or pardon, so that a ‘nil’ Police Clearance Certificate can be obtained from the Directorate of Criminal Investigations.</p> <p>(3) For the purpose of this Part, “records pertaining to the offender’s criminal conviction” includes –</p> <ul style="list-style-type: none">(a) all police records of complaint, investigation, detention, arrest and conviction;(b) all prison records of the offender’s remand and custodial sentence; and(c) all judicial records of trial proceedings, wheresoever held and in all formats, and upon the grant of a pardon under this Part, the Committee may require any person having the custody or control of such records to deliver the records to the Committee, except as provided in this Part. <p>(4) The granting of a pardon limits the right to access information under Article 35 of the Constitution only to the extent that it protects the human dignity, freedom and security, privacy and economic and social rights of an offender who has successfully rehabilitated and demonstrated to be deserving of the opportunity for full reintegration.</p>
Free Pardon	<p>26. (1) A ‘free’ pardon within the meaning of Article 133(1)(a) may be granted to offenders currently serving a sentence in the following special circumstances –</p> <ul style="list-style-type: none">(a) to vulnerable offenders on compassionate grounds;(b) to young offenders, except those convicted of a capital offence;(c) in the case of a wrongful conviction; and(d) to a foreign national, in the national interest. <p>(2) The effect of a free pardon is that records pertaining to the offender’s criminal conviction are expunged from all databases wheresoever held and in all formats, and the remainder of their sentence is remitted.</p> <p>(3) The effect of expunging of records pertaining to the offender’s</p>

	<p>criminal conviction in the circumstances of a free pardon shall entitle a person to a full prospective restoration of the offender’s civil rights and eligibility for social and economic benefits, without qualification.</p> <p>(4) An application for a free pardon may be made at any time post-conviction, except in the case of young offenders who may make an application upon attaining the age of 18 years.</p> <p>(5) An application for a free pardon must be accompanied by evidence showing the offender’s unique situation and the negative consequences of that situation on the offender, the offender’s dependent or the national interest.</p> <p>(6) If, based on the evidence provided in subsection (4), the Committee may make a recommendation to the President for the grant of a free pardon to the offender.</p> <p>(7) Upon approval by the President in subsection (6), all records pertaining to the offender’s criminal conviction shall be identified and expunged within thirty (30) days and, if the offender is serving a custodial sentence, the offender shall be immediately released from imprisonment without conditions.</p>
Conditional Pardon	<p>27. (1) In all other circumstances, a ‘conditional’ pardon under Article 133(1)(a) may be granted in the form of a record suspension, with the effect that –</p> <ul style="list-style-type: none">(a) physical records pertaining to the offender’s criminal conviction are sealed and delivered to the Committee, to be retained in accordance with the law on retention and archival of public records;(b) records in electronic format are removed from all databases, except for the final court judgment, which shall be anonymized in databases accessible to the public; and(c) a search of the criminal records database will result in a ‘nil’ record for the purpose of a Police Clearance Certificate. <p>(2) An offender is eligible to receive a conditional pardon in the following circumstances, if –</p> <ul style="list-style-type: none">(a) convicted of misdemeanour offences, is eligible to apply for record suspension five years after completion of any custodial sentence, period of probation, and payment of any associated

fine. The offender must provide –

- (i) evidence of a record free of any criminal conviction during that five-year period; and
 - (ii) an affidavit sworn by a probation officer or person of sound moral authority, such as a pastor, imam, teacher, social worker/psychologist, chief or other public official, attesting to the reformation and rehabilitation of the offender;
- (b) convicted of felony offences, is eligible to apply for a record suspension ten years after completion of any custodial sentence of incarceration, period of probation and parole, and payment of any associated fine.

(c) An offender who is eligible to a conditional pardon must provide –

- (i) evidence of a record free of any criminal conviction during that ten-year period; and
- (ii) an affidavit sworn by a probation officer or person of sound moral authority, such as a pastor, imam, teacher, social worker/psychologist, chief or other public official, attesting to the reformation and rehabilitation of the offender,

and the Committee must be satisfied that that a record suspension would not bring the administration of justice into disrepute in all the circumstances;

(d) the following offenders who have served a determinate sentence –

- (i) habitual offenders who have committed two or more felonies for which they have served a custodial sentence of three or more years;
- (ii) sexual offenders; and
- (iii) violent offenders who caused serious bodily harm to the victim where the offence was found to be motivated by discrimination (for example gender-based violence including female genital mutilation, domestic violence, ethnic-based violence or violence against persons with disabilities)

are eligible to apply for a record suspension fifteen years after completion of any custodial sentence of incarceration, period of probation and parole, and payment of any associated fine. The

	<p>offender must provide –</p> <ul style="list-style-type: none">(i) evidence of a record free of any criminal conviction during that ten-year period; and(ii) an affidavit sworn by a probation officer or person of sound moral authority, attesting to the reformation and rehabilitation of the offender, <p>and the Committee must be satisfied that a record suspension would not bring the administration of justice into disrepute in all the circumstances.</p> <p>(3) A conditional pardon shall not be construed as an acquittal of the offence for which the pardon is granted, nor shall it operate as a bar or mitigating factor to lawful prosecution of, or conviction for an offence other than that for which the pardon was granted.</p> <p>(4) A record suspension is conditional on maintaining a clear criminal record, and shall be automatically revoked if the offender is subsequently convicted of a felony offence, in which case the record is unsealed and returned to the relevant database.</p> <p>(5) An offender who has been sentenced to life imprisonment and an offender who has been designated as ‘high-risk’ under this Act, may be eligible for parole in accordance with this Act, but given that such offenders remain on parole for the remainder of their life, they are not eligible for a conditional pardon.</p>
Petition for Pardon	<p>28. (1) The Committee is responsible for receiving and determining petitions for record suspensions, which shall be handled administratively on the basis of satisfaction of the eligibility criteria set out in this Part, with the option of holding a hearing if the Committee deems it necessary for the purpose of being satisfied that –</p> <ul style="list-style-type: none">(a) in the case of a free pardon, the unique situation and the negative consequences of that situation on the offender, the offender’s dependent or the national interest justify expungement of the records pertaining to the offender’s criminal conviction in all the circumstances; or(b) in the case of a conditional pardon for offenders in subsections 27(2)(a) and (b), a record suspension would not bring the administration of justice into disrepute in all the circumstances. <p>(2) The Power of Mercy Case Manager stationed in each prison and</p>

	<p>mental health facility shall be responsible for identifying offenders who may be eligible to receive a free pardon, and for facilitating the preparation and submission of such petitions.</p> <p>(3) Technical officers in the Secretariat shall be responsible for receiving and processing petitions for free and conditional pardons, including liaising with the Judiciary, the Directorate of Criminal Investigations and any other relevant public entity to ensure that the records are delivered to the Committee, sealed or expunged upon approval of a petition by the Committee in respect of conditional pardons, or the President in respect of free pardons.</p> <p>(4) For petitions in the case of offenders in subsection 27(2)(c), and where the Committee deems it necessary to hold a hearing as set out in (1) above, an informal hearing shall be held before a single member of the Parole Board established in this Act.</p> <p>(5) For the category of offenders in subsection 27(2)(c), the offender must provide evidence sufficient to satisfy the Parole Board member that –</p> <ul style="list-style-type: none"> (a) the offender no longer poses a risk to any person; and (b) a record suspension would not bring the administration of justice into disrepute. <p>(6) Where a hearing is held in respect of any petition, the offender is entitled to make representations, and written reasons shall be provided for every decision to recommend that the Committee grant or deny the petition.</p> <p>(7) A decision of the Parole Board member in respect of sub-sections (1) and (5) is not subject to review, but an offender may re-apply at any time on the basis of new information to be considered.</p>
<p>PART IV — PAROLE</p>	
<p>Meaning and Purpose of Parole</p>	<p>29. (1) ‘Parole’ for the purpose of Article 133(1)(b) of the Constitution and this Act allows an offender who is serving a sentence of life imprisonment, or an offender who is designated as ‘high risk’ as set out in this Act, to be granted early release from imprisonment with authority to serve the remainder of the sentence at liberty, subject to supervision by a Parole Officer and any further conditions that may be imposed by the National Parole Board.</p>

	<p>(2) The purpose of parole is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of early release from imprisonment that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding persons.</p> <p>(3) Parole is a post-sentencing disposition granted to an offender outside of the judicial system by an independent administrative tribunal accountable for upholding the rule of law, including decision-making that is impartial, objective and fair.</p>
Establishment of Parole Board	<p>30. (1) There is established an administrative tribunal to be known as the National Parole Board, with the mandate to grant, deny and revoke parole, including deciding on the appropriate release conditions.</p> <p>(2) The National Parole Board shall comprise of no less than thirty (30) members appointed in accordance with section 31.</p> <p>(2) For the efficient and effective discharge of its functions, the Secretary appointed under section 14 shall be the Registrar, and the secretariat established by section 18 shall be the secretariat of the Parole Board.</p>
Appointment of Members of the Parole Board	<p>31. (1) For the purposes of this Act, and on the recommendations of the selection panel established in section 7, the President shall, by notice in the Gazette, appoint qualified persons to be members of the National Parole Board in accordance with this section.</p> <p>(2) A person is qualified for appointment as a member of the Parole Board, if the person—</p> <ul style="list-style-type: none">(a) is a citizen of Kenya;(b) holds a degree in from a university recognized in Kenya;(c) has at least seven years’ proven knowledge and experience in matters relating to any of the following fields –<ul style="list-style-type: none">(i) law;(ii) correctional services;(iii) social sciences;(iv) law enforcement or community corrections;(v) human rights;(vi) psychology or counselling; or(vii) alternative dispute resolution; and(d) meets the requirements of Chapter Six of the Constitution.

	<p>(3) A person shall not be qualified for appointment as a member of the Parole Board if the person –</p> <ul style="list-style-type: none">(a) is a serving public officer;(b) is a member of a governing body of a political party;(c) is an undischarged bankrupt;(d) has been convicted, whether in Kenya or elsewhere, of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;(e) is unable to perform the functions of office due to mental incapacity; or(f) has been removed from public office for contravening the provisions of the Constitution or any other law. <p>(4) Despite subsection (2), members of the National Parole Board shall have the necessary skills and training to allow them to make reasonable and fair parole decisions.</p> <p>(5) A person shall be appointed as a member of the Parole Board for a term of three years, and shall not be eligible for renewal.</p> <p>(6) Members of the Parole Board shall serve on an <i>ad hoc</i> basis as may be required given the volume and distribution of applications for parole and the hearing requirements at any given time, to be determined by the Registrar.</p>
Procedure for Appointment of Parole Board Members	<p>32. (1) Upon commencement of this Act, and at any time thereafter that the Registrar of the Parole Board determines it necessary for the efficient and effective discharge of the Parole Board’s functions, the selection panel established in section 7 shall, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for appointment as members of the Parole Board under this Act.</p> <p>(2) The selection panel shall—</p> <ul style="list-style-type: none">(a) consider the applications received under subsection (1) to determine their qualification in accordance with the provisions of the Constitution and this Act;(b) short list the applicants;(c) publish the names of the shortlisted applicants in at least two daily newspapers of national circulation;

	<p>(d) conduct interviews of the shortlisted applicants in a process that is open to the public; and</p> <p>(e) recommend to the President a sufficient number of suitably qualified persons to ensure that the President has choice in appointing members in accordance with subsection (4) below.</p> <p>(3) Within seven days of receipt of the list of persons nominated by the selection panel under (2) the President shall by notice in the <i>Gazette</i> –</p> <p>(a) appoint qualified persons to be members of the National Parole Board in such sufficient number to address the need as determined by the Registrar; and</p> <p>(b) in accordance with Article 132(3)(b) of the Constitution and section 7 of the National Government Co-ordination Act, 2013, assign through the Cabinet Secretary responsible for correctional services, the responsibility of discharging the executive function of exercising the power of mercy under Article 133(1)(b) of the Constitution to the members of the National Parole Board.</p> <p>(4) In recommending and appointing members of the National Parole Board, the section panel and the President shall –</p> <p>(a) have regard to ethnic and regional diversity of the people of Kenya; and</p> <p>(b) ensure that the full membership of the National Parole Board is in compliance with the two thirds gender principle.</p> <p>(5) Before assuming office, members of the National Parole Board shall, before the Chief Registrar, each make and subscribe to the oath or affirmation prescribed in the Regulations.</p>
Remuneration of Parole Board Members	<p>33. (1) Members of the Parole Board shall be paid a sitting allowance for each petition that they hear, in an amount to be determined by the Registrar, taking into consideration the time and any expenses required for –</p> <p>(a) preparation in advance of a hearing, including reviewing all reports submitted in support of the petition;</p> <p>(b) hearing the petition, including any witnesses and victim(s);</p> <p>(c) deliberations with the other members of the panel, and preparing a written decision; and</p> <p>(d) travel to and from the prison where the hearing is held.</p> <p>(2) The Registrar shall, in consultation with the Salaries and</p>

	<p>Remuneration Commission, cause a rate schedule to be prepared for this purpose.</p>
<p>Functions and Powers of the Parole Board</p>	<p>34. (1) The functions of the National Parole Board shall be to—</p> <ul style="list-style-type: none"> (a) receive, consider and grant or deny applications for parole from eligible offenders; (b) impose and vary conditions on the grant of parole; (c) revoke a grant of parole if a parolee re-offends; (d) hold hearings and make recommendations to the Committee in respect of conditional pardons in accordance with section 28; (e) undertake such other activities as may be necessary for the discharge of its functions and the exercise of its powers under this Act; and (f) carry out any other function as may be conferred on it under any other written law. <p>(2) Except as provided for under this Act, the Parole Board shall, in the performance of its functions, not be subject to the direction or control of any person or authority.</p> <p>(3) For the purposes of carrying out the functions under subsection (1), members of the Parole Board shall have the power to –</p> <ul style="list-style-type: none"> (a) issue summons requiring the appearance before it of any person it considers necessary; and (b) issue a warrant of committal in respect of an offender whose parole is revoked.
<p>Eligibility for Parole</p>	<p>35. (1) The following offenders are eligible to apply for parole –</p> <ul style="list-style-type: none"> (a) offenders serving life imprisonment; and (b) offenders serving a determinate sentence and who have been designated as a ‘high risk offender’ in accordance with the Criminal Procedure Code; <p>whose eligibility period has been determined by the court at the time of sentencing, based on the Parole Eligibility Guidelines contained in the Third Schedule to the Criminal Procedure Code.</p> <p>(2) For the purpose of subsection (1), ‘eligibility period’ means the minimum period of time that an offender must serve the sentence imposed before becoming eligible to apply for parole in accordance with this Act.</p> <p>(3) For greater certainty, offenders become eligible to apply for parole</p>

	<p>on the day after their eligibility period expires, and remain eligible to apply at any time after that during the remainder of their sentence.</p>
High Risk Offenders	<p>36. (1) Offenders who have been convicted of offences that attract the possibility of life imprisonment but who are sentenced to a determinate period, where the offence is aggravated by one or more factors including –</p> <ul style="list-style-type: none">(a) a degree of violence, including the use of a weapon;(b) multiple victims;(c) hate;(d) discrimination; or(e) the particular vulnerability of the victim, <p>are liable for designation by the court as a ‘high risk offender’ in accordance with the Criminal Procedure Code.</p> <p>(2) Designated high risk offenders are eligible to apply for parole, but are subject to strict supervision and conditions based on assessed risk factors, as set out in this Part.</p>
Petition Process	<p>37. (1) The Power of Mercy Case Management Committee at the prison where the offender is serving their sentence shall be responsible for assisting an eligible offender to petition for parole once the offender becomes eligible to apply for parole in accordance with this Part.</p> <p>(2) Despite subsection (1), the Power of Mercy Case Management Committee, shall –</p> <ul style="list-style-type: none">(a) communicate with offenders once their period for parole eligibility approaches;(b) conduct interviews with offenders to obtain information required to satisfy the criteria considered in granting parole under this Part;(c) gather information from prison records and officials to obtain information required to satisfy the criteria considered in granting parole;(d) carry out any investigation required to obtain information from persons outside of the prison;(e) identify any person who may be entitled to present a victim impact statement or otherwise participate in the hearing, and facilitate their participation in accordance with section ***;(f) undertake, or arrange to be undertaken, a Parole Risk Assessment or a Mental Health Report as may be applicable; and

(g) prepare a Parole Report for submission to the Parole Board.

(3) The Parole Report referred to in paragraph (2)(g), shall contain the following information –

- (a) the offence for which the offender has been serving a sentence;
- (b) the previous criminal record of the offender, if any;
- (c) the offender's conduct during the sentence, including any record of discipline;
- (d) any rehabilitation programs or training undertaken by the offender during the sentence;
- (e) the offender's physical and mental health status;
- (f) the offender's plans post release, for example employment, schooling, or other activities;
- (g) any other information that is relevant to the offender's potential for successful reintegration into society; and
- (h) recommendations on the granting of parole or otherwise, including recommendations regarding any conditions to be imposed on a grant of parole.

(4) The Parole Risk Assessment referred to in paragraph (2)(f), is based on a review of all available information about the offender with the objective of identifying risk factors in order to protect society after a parolee is released, and shall contain the following information –

- (a) the offender's social history and relationships including family and community ties;
- (b) the victim's views on the offender's possible release; and
- (c) the likelihood of recidivism and any other risk posed if the offender is released, and the manner in which any risk can be mitigated.

~~Relevant security agencies may be consulted in preparation of the Risk Assessment, as appropriate in the circumstances of the individual case.~~

(5) In the case of an offender with a mental disability who has applied for parole, a Mental Health Report shall be prepared, which shall include the following information –

- (a) the nature of the mental illness and the effect, if any, it has on the offender's ability to carry out daily activities;
- (b) any treatment that the offender is receiving, including any prescribed medication; and

	<p>(c) the offender’s expected ability to continue accessing treatment if released, including the availability of rehabilitation services.</p> <p>(6) The Power of Mercy Case Manager shall, in addition to the functions provided for in subsection (2), coordinate all cases to be placed before the Parole Board for hearing, by ensuring that all the necessary documentation, including at a minimum the Parole Report, the Parole Risk Assessment and any Mental Health Report, is submitted to the Parole Board prior to the hearing, and that all persons required to be in attendance are present during the hearing, including arranging for summons by the Parole Board as necessary.</p>
Guiding Principles for Parole Board Decision-Making	<p>38. (1) As a means of ensuring that the parole process is fair, the Parole Board shall be guided by the following principles for decision making –</p> <ul style="list-style-type: none">(a) consideration of community safety;(b) consideration of input from stakeholders such as victims and the offender’s family members;(c) transparency and accountability, which includes provision of all relevant information to offenders, victims and the public, and clearly indicating reasons for decisions;(d) continuous skills development and training on risk assessment and other matters pertaining to parole to improve decision making;(e) information sharing with other stakeholders in the criminal justice sector for a coordinated system; and(f) collaboration and engagement with other stakeholders whenever required or appropriate.
Parole Board Hearings	<p>39. (1) Parole hearings shall be conducted by a three-member panel of the Parole Board, selected by the Registrar on an <i>ad hoc</i> basis from the <i>Gazetted</i> Parole Board members who are available at the location and time set for a hearing.</p> <p>(2) The panel as constituted in accordance with subsection (1), shall sit at a prison to hear petitions from the offenders serving sentences in that prison.</p> <p>(3) The offender is entitled to be present, to make submissions including calling any person to be a witness in support, and to be represented by counsel or any other person as the offender may wish.</p>

	<p>(4) At a hearing, the Power of Mercy Case Manager is responsible for presenting the various reports to the Parole Board, and for ensuring the attendance of any witness including Parole or Probation Officers, victims, and any other person who has relevant information to be considered by the Parole Board.</p> <p>(5) The Parole Board has the power to determine and control its own procedure.</p> <p>(6) The Parole Board shall not be bound by the strict rules of evidence..</p> <p>(7) Parole hearings are open to the public except in circumstances where there is a demonstrated need to protect the privacy of any individual, in particular a vulnerable victim such as a child, if the specific privacy interests of the individual outweigh the public interest in an open hearing.</p> <p>(8) In cases where a vulnerable victim is involved, measures may be taken to protect privacy interests, including holding the whole or part of a hearing <i>in camera</i>.</p> <p>(9) In appropriate circumstances and subject to available resources and facilities, hearings may be held virtually, so long as facilitation is made for participation of all persons who are entitled to be participate.</p> <p>(10) All hearings shall be recorded, and recordings shall be maintained and stored by the Registrar in a secure manner in accordance with Part ** of this Act. Recordings of hearings, or transcripts thereof, may be made available upon request through access to information procedures, for free or at a reasonable cost for transcription, as required by the Access to Information Act, 2016.</p> <p>(11) The Committee may retain legal counsel to advise the Parole Board on any procedural aspect of a parole hearing, including requests by any person for a closed hearing, as may be necessary in the circumstances, but any such counsel may not participate in the Parole Board’s substantive decision making.</p>
Victim Participation	<p>40. (1) Victims are entitled to participate in the parole hearing, including submitting a Victim Impact Statement either orally or in writing. Victim Impact Statements may include information about –</p>

	<ul style="list-style-type: none">(a) the physical and emotional harm caused to them as a result of the offence, including any ongoing disability and medical needs;(b) the financial and social harm caused, including effects on the victim(s)' personal relationships; and(c) any safety concerns if the offender is released. <p>(2) The Power of Mercy Case Manager shall be responsible for –</p> <ul style="list-style-type: none">(a) identifying victims of offenders who have applied for parole;(b) sensitizing the victim(s) on the process and implications of parole; and(c) facilitating victim participation in the process including –<ul style="list-style-type: none">(i) informing the victim of the date, time and location of a parole hearing, including arranging for access to the prison or facilitating participation in any virtual hearing by the victim and any representative or support person, who shall be identified by the victim(s) in advance;(ii) ensuring the submission of any Victim Impact Statement; and(iii) liaising with the Victim Protection Board or the Witness Protection Agency for identification and coordination of such assistance for the victim as may be relevant and appropriate in the circumstances.
Factors to be considered by the Parole Board	<p>41. (1) The Parole Board shall consider all relevant information prior to making a decision to grant or deny parole, including the following factors –</p> <ul style="list-style-type: none">(a) the circumstances of the offence;(b) the offender's perspective and attitude towards the offence, including any remorse shown and efforts to make restitution to the victim;(c) the offender's relationships with family, peers and others in the community;(d) the offender's employment history or previous economic engagements;(e) criminal record of the offender and any other history of previous antisocial behaviour;(f) social issues such as a history of family violence and alcohol or substance abuse;(g) the mental status of the offender and potential impact on the ability to re-offend, including whether the offender has received treatment for mental illness (in the form of a Mental Health

	<p>Report from qualified professionals);</p> <ul style="list-style-type: none"> (h) opinions from professionals that have direct contact with or knowledge of the offender such as correctional service staff, police or probation officers; (i) the offender’s conduct post-conviction, including – <ul style="list-style-type: none"> (i) prison disciplinary record; and (ii) participation in rehabilitation programs while incarcerated such as skills training or formal education that could aid rehabilitation and reintegration post release; (j) views of victims and the offender’s family and community members concerning the proposed release of the offender; and (k) any other information that could be indicative of the risk that the offenders could pose to the community in the case of release.
<p>Parole Conditions and Release Criteria</p>	<p>42. (1) After consideration of all the factors and information submitted, if the Parole Board is satisfied that the offender will not pose an undue risk to society and has the potential for rehabilitation if released, the Parole Board shall grant parole and order that the offender be released to serve the remainder of the sentence in accordance with conditions individually tailored to address the rehabilitation and reintegration needs of the particular offender.</p> <p>(2) At a minimum, conditions must include supervision by a Parole Officer.</p> <p>(3) Despite subsection (3), the other conditions that may be imposed by the Parole Board in appropriate circumstances include a condition that the offender must –</p> <ul style="list-style-type: none"> (a) spend a specified period of time in a halfway house or similar structured interim release program, before full release with conditions; (b) report to their Parole Officer at specified times and place; (c) live at a specified location or with a specified person; (d) avoid taking or abusing alcohol or drugs; (e) avoid contact with a the victim or former criminal associates; (f) refrain from committing any criminal offence; (g) participate in a rehabilitation program or educational activities; (h) actively seek employment or other income generating opportunities; and (i) be supervised by a social worker, if the offender is under the age of twenty-two or as otherwise deemed to be in the best interests

<p>Decisions of the Parole</p>	<p>of the offender’s rehabilitation and reintegration.</p> <p>(3) In determining the conditions to impose on a parolee, the Parole Board shall have regard to any recommendations made by the court at the time of sentencing that are tailored to the specific offender and circumstances of the offence.</p> <p>(4) If an offender is designated a ‘high risk’ offender, the Parole Board shall not grant parole if it determines that there is a reasonable likelihood that the offender will commit a further violent offence.</p> <p>(5) In making a determination under subsection (4), the Parole Board may take into account any violent behaviour of the offender while in prison, including the absence thereof.</p> <p>(6) In addition to the conditions that may be imposed in (3), further conditions may be imposed for high-risk offenders, as appropriate in the individual circumstances, which may include –</p> <ul style="list-style-type: none">(a) reporting directly to the police on a regular basis, in addition to regular reporting to a parole officer; or(b) a requirement for periodic risk assessments by a mental health professional. <p>(7) A parole officer who is assigned the mandate to supervise a high-risk offender, may revoke the offenders parole in accordance with section **, and apply for the offender to be committed in custody, if the parole officer, is of the opinion at any time, that the parolee is poses a great risk to the community..</p> <p>(8) An offender who is released on parole must comply with all conditions imposed, failure to comply with the conditions may result into a revocation of parole in accordance with section 45.</p> <p>(9) If a high risk offender’s parole is not revoked for the entire time remaining in the sentence, the offender shall thereafter be considered as having completed the sentence, and shall be entitled to enjoy full freedom.</p> <p>(10) For greater clarity, an offender sentenced to life imprisonment who is granted parole shall remain on parole for the remainder of his or her life, unless parole is revoked in accordance with section 45.</p> <p>43. (1) A decision of the National Parole Board shall be by consensus or by</p>
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Board	<p>a majority of the panel hearing the petition.</p> <p>(2) The decision shall be in writing and include substantive reasons for the decision made, including a decision to deny parole, impose conditions, or make any other orders such as holding a hearing <i>in camera</i>.</p> <p>(3) A member of the panel who disagrees with the majority decision may provide their own reasons in dissent, but shall not be required to do so.</p> <p>(4) Copies of the Parole Board decision shall be provided to –</p> <ul style="list-style-type: none">(a) the offender;(b) any other person who made submissions at the parole hearing, including victims; and(c) any person who is responsible for implementing any aspect of the decision, such as a Parole Officer.
Review of Parole Board Decisions	<p>44. (1) A decision of the Parole Board are subject to review by the Review Sub-Committee in accordance with section 10.</p> <p>(2) Despite subsection (1), a denial of parole shall be reviewed by the Parole Board after five years, and after every subsequent five years, including holding a hearing and considering any updated information about the offender, until the offender is granted parole or serves the remainder of his or her sentence.</p>
Revocation of Parole	<p>45. (1) A parole may be revoked at any time by the Parole Board –</p> <ul style="list-style-type: none">(a) on the recommendation of the assigned Parole Officer, if the parolee re-offends or otherwise breaches any of the conditions imposed; or(b) without such recommendation if the Parole Board considers it necessary in the interest of the parolee or public safety. <p>(2) Before revoking a grant of parole, the Parole Board shall –</p> <ul style="list-style-type: none">(a) inform the parolee in writing of its intention to consider revocation, including the reasons therefore; and(b) provide the parolee an opportunity to make representations in this respect to the Board, and may hold a hearing for this purpose. <p>(3) The Parole Board shall in writing, provide reasons for a revocation</p>

	<p>of an offender’s parole.</p> <p>(4) A decision to revoke parole is subject to judicial review by the High court.</p> <p>(5) If a decision to revoke parole is not challenged or is upheld on judicial review, the Parole Board shall issue a warrant for committal and the offender shall be returned to prison.</p> <p>(6) A revocation of a parole may be reviewed by the Parole Board after five years,.</p>
	<p>PART V— COMMUTATION</p>
<p>Meaning of Commutation</p>	<p>46. (1) Commutation means the substitution of a less severe punishment.</p> <p>(2) Commutation is a change in the type or severity of punishment, and does not otherwise relieve the consequences of a conviction.</p> <p>(3) Commutation is not revocable.</p>
<p>Eligibility for Commutation</p>	<p>47. Commutation may be granted where—</p> <p>(a) an offender petitions for commutation of sentence, including from a custodial to a non-custodial sentence, on the basis of compassionate grounds such as advanced age, terminal illness, pregnancy of a female offender, or if the offender is the sole caretaker of dependent children or other vulnerable persons; or</p> <p>(b) a group of offenders have their sentences commuted at the instigation of the Commissioner of Prisons, for the purpose of decongesting of prisons or commuting capital sentences to life imprisonment.</p>
<p>Commutation Process</p>	<p>48. (1) An individual petition for commutation in accordance with paragraph 47(a) shall be made to the Power of Mercy Case Manager at the respective prison.</p> <p>(2) A petition for commutation of a group of offenders in accordance with section 47(b) shall be made to the Committee through the Commissioner of Prisons.</p> <p>(3) The Power of Mercy Case Manager, and the Secretariat, shall coordinate with –</p> <p>(a) the Prisons Service to identify offenders whose sentences may be commuted in accordance with section 47;</p>

	<p>(b) the Judiciary as may be necessary or appropriate for summary review of individual cases, or the imposition of probation orders; and</p> <p>(c) Probation and After Care Services for post-release supervision in the community of offenders whose custodial sentence is commuted to a non-custodial sentence.</p> <p>(4) In every case, a summary review shall be undertaken, based on the information contained in the offender’s prison file and any additional information provided with the petition, to ensure that the benefit to the offender of a commutation outweighs any potential risk to society or to any person.</p> <p>(5) A petition filed in accordance with section 47(a) may be made in conjunction with a petition for a free pardon, if the offender meets the eligibility criteria set out in section 26, but the grant of a free pardon in such circumstances is not automatic upon the grant of commutation.</p>
	<p>PART VI — REMISSION</p>
<p>Meaning of Remission</p>	<p>49. (1) Remission is early release from imprisonment on the basis of good conduct while incarcerated, after serving two thirds of a determinate custodial sentence.</p> <p>(2) For the purpose of Article 133(1)(d) of the Constitution and this Part –</p> <p>(a) remitting ‘all’ of a punishment means automatic release without conditions or supervision in the community; and</p> <p>(b) remitting ‘part’ of a punishment means discretionary release together with, at a minimum, supervision in the community by a probation officer,</p> <p>based on the eligibility criteria set out in section 50.</p> <p>(3) In both paragraph (2)(a) and (2)(b), all of the remainder of the custodial sentence is remitted.</p> <p>(4) Full remission within the meaning of paragraph (2)(a) is non-revocable.</p>
<p>Eligibility for Remission</p>	<p>50. (1) Remission within the meaning of section 49(2)(a) is automatic on the basis of a clear record of discipline, and available to all offenders serving a determinate custodial sentence with the exception of</p>

	<p>designated ‘high risk’ offenders who may instead be eligible for parole in accordance with Part IV of this Act.</p> <p>(2) Remission within the meaning of section 49(2)(b) may be considered for offenders who have a record of minor disciplinary offences, or a single aggravated disciplinary offence, after serving two thirds of the sentence or at any time after that point, if the offender’s behaviour improves or poor conduct is mitigated in the form of participation in rehabilitative programming designed to address the conduct or its root causes, for example anger management.</p> <p>(3) An offender who has a record of repeat minor disciplinary or aggravated disciplinary offences and who does not show any potential for or commitment to reform, and any offender who commits any of the following offences –</p> <ul style="list-style-type: none">(a) mutiny or incitement to mutiny;(b) aggravated or repeated assaults on another offender that results in serious bodily harm or permanent disfigurement to the victim; or(c) assaulting a prison officer or visitor to the prison, is not eligible for remission.
Minor and Aggravated Disciplinary Offences	<p>51. (1) For the purpose of section 50(2), a ‘minor disciplinary offence’ means –</p> <ul style="list-style-type: none">(a) disobeying any order of the officer in charge or of any other prison officer or any prison rule;(b) being disrespectful towards any officer or any person authorized to visit the prison;(c) being idle, careless or negligent at work, or refusing to work;(d) using any abusive, insolent, threatening, indecent or other improper language;(e) making any indecent gesture, or acting in an indecent manner;(f) communicating with another offender or any other person without authority;(g) leaving an assigned cell or ward or place of work or other place without permission;(h) wilfully disfiguring or damaging any part of the prison or any property which is not the offender’s, to the extent that the damage is not structural or similarly serious;(i) commits any assault that does not result in serious bodily harm to the victim(s);

	<ul style="list-style-type: none">(j) committing any nuisance;(k) possessing or attempting to obtain any unauthorized article;(l) giving to or receiving from any other person an unauthorized article;(m) making repeated groundless or bad faith complaints;(n) in any other way offends against good order and discipline;(o) attempts to do any of the foregoing; or(p) aids or abets another person in doing any of the foregoing. <p>(2) For the purpose of sub-section 50(2), an ‘aggravated disciplinary offence’ means –</p> <ul style="list-style-type: none">(a) wilfully disfiguring or damaging any part of the prison or any property which is not the offender’s, if the damage is structural or similarly serious;(b) committing or taking part in any assault that results in serious bodily harm to the victim(s), so long as the harm is not permanent disfigurement; or(c) committing any act of gross misconduct or insubordination within the meaning of the <i>Prisons Rules, 1963</i>.
Partial Remission	<p>52. (1) For offenders with a single or record of minor disciplinary offences, the Power of Mercy Case Manager, in consultation with the Committee, may exercise discretion to remit part of an offender’s punishment by imposing supervision in the community by a probation officer for a set period of time, which shall not be longer than six months in any case.</p> <p>(2) The Power of Mercy Case Manager shall, in the circumstances of an offender who has committed a single aggravated disciplinary offence, refer the case to the Parole Board for a determination whether the offender poses any undue risk to society, and for the imposition of conditions in the form of supervision in the community by a probation officer for a set period of time sufficient to support reintegration, which in any case, shall not be longer than two years.</p> <p>(3) The Parole Board may deny an offender remission, if it determines the risk to society posed by an offender under subsection (2), cannot be mitigated by supervision in the community.</p> <p>(4) Despite the denial under subsection (3), the offender may become eligible if the offender’s behaviour improves or poor conduct is</p>

Remission Process	<p>mitigated as provided for in section 50(2).</p> <p>53. (1) To ensure the efficient and expeditious processing of remission, the Power of Mercy Case Manager in each prison shall be responsible for liaising with the Officer in Charge and any other relevant prison officials including Welfare/Medical Officers, Catechists, Documentation Officers and Officers responsible for Industry for the purpose of preparing a Prison Report for offenders who are close to having served two thirds of their sentence and are, or may be eligible for remission, in accordance with this Part.</p> <p>(2) The Prison Report shall contain –</p> <ul style="list-style-type: none">(a) the date upon which the offender will have served two thirds of the custodial sentence, which shall include any time spent in remand pending trial or conviction;(b) details of the offender’s prison disciplinary record;(c) details of the offender’s participation in any rehabilitative programming undertaken during the custodial sentence; and(d) any recommendations of prison officers regarding the offender’s eligibility for remission. <p>(3) Based on the Prison Report, the Power of Mercy Case Manager shall make a recommendation to the Committee for full or partial remission based on the eligibility criteria in section 50, including referral to the Parole Board as may be necessary in the circumstances.</p> <p>(4) The determination in subsection 52(2) shall be made by a single member of the Parole Board, based on the Prison Report in (2) above. In determining whether remission should be granted in the circumstances, the Parole Board member may –</p> <ul style="list-style-type: none">(a) invite submissions from any person who may have relevant information; or(b) hold an informal hearing, <p>but shall in every case give the offender an opportunity to make representations either orally or in writing.</p> <p>(5) Any denial of remission and recommendations by the Parole Board member in accordance with section 52(3), including any period after which the offender may become eligible for reconsideration, shall be in writing, with a copy provided to the offender and a copy placed in the offender’s prison records.</p>
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	<p>(6) The Power of Mercy Case Manager shall, coordinate with the Committee for granting of remission, and with the Officer in Charge for release of offenders.</p>
Revocation of Partial Remission	<p>54. (1) Partial remission may be revoked if the offender commits a new offence, or engages in conduct that poses a risk to society or any person, or repeatedly breaches conditions of the supervision order.</p> <p>(2) A Probation Officer may recommend that remission be revoked by the Committee in any of the circumstances set out in subsection (1), by providing details of the offender’s conduct to the Committee.</p> <p>(3) A recommendation for revocation of remission shall be in writing, and shall include detailed reasons why, in the opinion of the Probation Officer, remission should be revoked.</p> <p>(4) Upon receipt of a recommendation in subsection (3), the Committee shall refer the matter to a single member of the Parole Board who shall review and determine the matter within fourteen days.</p> <p>(5) In determining whether remission should be revoked in the circumstances, the Parole Board member may –</p> <ul style="list-style-type: none">(c) invite submissions from any person who may have relevant information; or(d) hold an informal hearing, <p>but shall in every case inform the offender of the recommendation and give the offender an opportunity to make representations orally or in writing.</p> <p>(6) The Parole Board member shall determine whether the offender poses an undue risk to society or to any person.</p> <p>(7) If the Parole Board member determines that there is undue risk that cannot be mitigated, remission shall be revoked.</p> <p>(8) If the Parole Board member determines that any risk may be mitigated by a longer period of supervision in the community, the supervision order may be varied but in no circumstance may it extend beyond the remainder of the remitted sentence.</p> <p>(9) The Parole Board member shall give reasons in writing for the</p>

	<p>decision, and shall provide a copy to the Probation Officer and the offender.</p> <p>(10) A decision to revoke remission is subject to judicial review by a court.</p> <p>(11) An offender whose conditional remission is revoked and the decision is not challenged or is upheld on judicial review, shall be issued a warrant for committal and returned to incarceration to serve the portion of the sentence that was remitted.</p>
<p>PART VII — MENTAL HEALTH REVIEW BOARD</p>	
<p>Purpose of the Mental Health Review Board</p>	<p>55. (1) The Mental Health Review Board established in this Part plays a critical role in addressing mental health in the criminal justice system by protecting the rights of offenders living with mental disability to have their dignity respected, and not to be punished in a cruel, inhuman or degrading manner.</p> <p>(2) Offenders who have been determined by a court to be of unsound mind, guilty but insane, or unable to understand the proceedings against them, in accordance with the Criminal Procedure Code or the Kenya Defence Forces Act, 2012, shall be referred to an independent administrative tribunal for determination of whether, and for how long they may be committed to a mental health facility.</p>
<p>Establishment of Mental Health Review Board</p>	<p>56. (1) There is established an administrative tribunal called the Mental Health Review Board, with the authority to determine whether offenders who have been found to be of unsound mind, guilty but insane, or not able to understand the proceedings against them, raise a serious likelihood of immediate or imminent harm to the offender or to other persons and should be committed to a mental health facility, or may be released into the community with conditions for supervision and support.</p> <p>(2) The Mental Health Review Board shall be comprised of no less than ten (10) members appointed in accordance with section 57.</p> <p>(3) For the efficient and effective discharge of its functions, the Secretary appointed under section 14 shall be the Registrar, and the secretariat established by section 18 shall be the secretariat of the Mental Health Review Board.</p>
<p>Appointment of Members</p>	<p>57. (1) For the purposes of this Act, and on the recommendations of the</p>

of the Mental Health
Review Board

selection panel established in section 7, the President shall, by notice in the Gazette, appoint qualified persons to be members of the Mental Health Review Board in accordance with this section.

(2) A person shall be qualified for appointment as a member of the Mental Health Review Board, if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in from a university recognized in Kenya;
- (c) has at least seven years' proven knowledge and experience in matters relating to any of the following fields –
 - (i) psychiatry or mental health;
 - (ii) psychology or counselling;
 - (iii) rehabilitation or psychosocial support services;
 - (iv) social work;
 - (v) law;
 - (vi) community corrections; or
 - (vii) human rights, and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) A person shall is disqualified for appointment as a member of the Mental Health Review Board if the person –

- (a) is a serving public officer;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt;
- (d) has been convicted, whether in Kenya or elsewhere, of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (e) is unable to perform the functions of office due to mental incapacity; or
- (f) has been removed from public office for contravening the provisions of the Constitution or any other law.

(4) Despite subsection (2), members of the Review Board shall have the necessary skills and training to allow them to make reasonable and fair decisions regarding the best options for treatment and support of offenders living with a mental disability.

(5) A person shall be appointed as a member of the Review Board for a term of three years, and shall be eligible for renewal once.

	<p>(6) Members of the Review Board shall serve on an <i>ad hoc</i> basis as required any time an offender is referred by a court.</p>
<p>Procedure for Appointment of Review Board Members</p>	<p>58. (1) Upon commencement of this Act, and at any time thereafter that the Registrar of the Mental Health Review Board determines it necessary for the efficient and effective discharge of the Review Board’s functions, the selection panel established in section 7 shall, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for appointment as members of the Review Board under this Act.</p> <p>(2) The selection panel shall—</p> <p>(a) consider the applications received under subsection (1) to determine their qualification in accordance with the provisions of the Constitution and this Act;</p> <p>(b) short list the applicants;</p> <p>(c) publish the names of the shortlisted applicants in at least two daily newspapers of national circulation;</p> <p>(d) conduct interviews of the shortlisted applicants in a process that is open to the public; and</p> <p>(e) recommend to the President a sufficient number of suitably qualified persons to ensure that the President has choice in appointing members in accordance with subsection (4) below.</p> <p>(3) Within seven days of receipt of the list of persons nominated by the selection panel under (2) the President shall by notice in the <i>Gazette</i> appoint qualified persons to be members of the Mental Health Review Board in such sufficient number to address the need as determined by the Registrar.</p> <p>(4) In recommending and appointing members of the Review Board, the section panel and the President shall –</p> <p>(a) have regard to ethnic and regional diversity of the people of Kenya; and</p> <p>(b) ensure that the full membership of the Review Board is in compliance with the two thirds gender principle.</p> <p>(5) Before assuming office, members of the Review Board shall, before the Chief Registrar, each make and subscribe to the oath or affirmation prescribed by Regulation.</p>
<p>Remuneration of Review</p>	<p>59. (1) Members of the Review Board shall be paid a sitting allowance for</p>

Board Members	<p>each case that they hear, in an amount to be determined by the Registrar, taking into consideration the time and any expenses required for –</p> <ul style="list-style-type: none">(a) preparation in advance of a hearing, including reviewing all reports required to make a disposition in accordance with this Part;(b) hearing the matter, including any witnesses;(c) deliberations with the other members of the panel, and preparing a written decision; and(d) travel to and from the prison or mental health facility where the hearing is held, as may be applicable in the circumstances. <p>(2) The Registrar shall, in consultation with the Salaries and Remuneration Commission, cause a rate schedule to be prepared for this purpose.</p>
Functions and Powers of the Review Board	<p>60. (1) The functions of the Mental Health Review Board shall be to—</p> <ul style="list-style-type: none">(a) determine whether an offender who has been found to be –<ul style="list-style-type: none">(i) of unsound mind and consequently incapable of making his defence in accordance with section 162 of the Criminal Procedure Code or section 178 of the Kenya Defence Forces Act, 2012;(ii) guilty of the act or omission charged but was insane when he did the act or made the omission (ie. ‘guilty but insane’) in accordance with section 166 of the Criminal Procedure Code or section 179 of the Kenya Defence Forces Act, 2012; or(iii) unable to understand the proceedings against them in accordance with section 167 of the Criminal Procedure Code,raises a serious likelihood of immediate or imminent harm to the offender or to other persons;(b) determine, in the best interests of the offender and having regard to the safety of the offender and the safety of others, whether an offender should be committed to a mental health facility, or may be released into the community with conditions for supervision and support;(c) order that an offender be committed to custody in a mental health facility for an indeterminate period, subject to review as required by this Part;

	<ul style="list-style-type: none"> (d) review and vary a disposition made under paragraph (b); (e) undertake such other activities as may be necessary for the discharge of its functions and the exercise of its powers under this Act; and (f) carry out any other function as may be conferred on it under any other written law. <p>(2) Except as provided for under this Act, the Review Board shall, in the performance of its functions, not be subject to the direction or control of any person or authority.</p> <p>(3) For the purposes of carrying out the functions in (1), members of the Review Board shall have the power to –</p> <ul style="list-style-type: none"> (a) issue summons requiring the appearance before it of any person it considers necessary; and (b) issue a warrant of committal in respect of an offender.
<p>Review Board Case Management</p>	<p>61. (1) The Mental Health Review Board shall be supported by a Power of Mercy Case Manager stationed in each mental health facility where offenders are committed.</p> <p>(2) The Power of Mercy Case Manager shall be responsible for –</p> <ul style="list-style-type: none"> (a) identifying the need for, and coordinating initial and review hearings by the Review Board; and (b) further coordinating with the person in charge of a mental health facility to ensure that a Behavioural Risk Assessment is undertaken immediately for each offender upon initial committal by the court, and prior to each review hearing, including for offenders who are released into the community in accordance with this Part.
<p>Behavioural Risk Assessment</p>	<p>62. (1) Upon committal to a mental health facility pursuant to a finding by a court that an offender is –</p> <ul style="list-style-type: none"> (a) of unsound mind and consequently incapable of making his defence in accordance with section 162 of the Criminal Procedure Code; (b) guilty of the act or omission charged but was insane when he did the act or made the omission (ie. ‘guilty but insane’) in accordance with section 166 of the Criminal Procedure Code; or (c) unable to understand the proceedings against them in accordance with section 167 of the Criminal Procedure Code, <p>the person in charge of the mental health facility shall immediately</p>

cause a Behavioural Risk Assessment to be conducted in respect of the offender, for consideration by the Mental Health Review Board.

(2) The Behavioural Risk Assessment shall be conducted by a mental health expert with experience in criminal justice, for example a forensic psychiatrist, using a multi-disciplinary approach with input from social workers, psychologists, occupational therapists or correctional officers who have had the opportunity to interact with the offender either in remand or in the community, in addition to using actuarial assessment tools.

(3) The purpose of the Behavioural Risk Assessment is to review the offender's mental health treatment needs and level of ability to function in the community without posing a risk of immediate or imminent harm to the offender or to other persons.

(4) For offenders charged with a sexual offence, additional testing shall be conducted to assess for deviant sexual preferences, for example paedophilia.

(5) The Behaviour Risk Assessment Report must specifically make reference to the following –

- (a) the offender's mental health diagnosis, treatment and counselling history;
- (b) the offender's temperamental disposition as it relates to anti-social tendencies and criminal propensities;
- (c) the offender's level of social competence;
- (d) the offender's problem resolution skills;
- (e) whether the offender has a sufficient level of life-skills to function in the community;
- (f) the offender's level of social supports within the community;
- (g) the offender's general ability to access community resources and mental health supports; and
- (h) any other information that, in the assessor's opinion, is relevant and necessary for the purpose.

(6) The Behavioural Risk Assessment shall be completed and the Report in subsection (5), be submitted to the Mental Health Review Board within twenty (20) days of the offender being committed to a mental health facility pursuant to an order of a court, for the purpose of

	<p>consideration at an initial hearing by the Review Board.</p> <p>(7) In addition to the requirements under subsection (6), copies of the Behavioural Risk Assessment Report shall be provided to the offender, the offender’s counsel or legal representative, and the prosecutor.</p>
<p>Review Board Hearings Process.</p> <p>Cap. 80.</p>	<p>63. (1) Initial disposition by the Mental Health Review Board of an offender who has been found by a court to be of unsound mind, guilty but insane, or unable to understand the proceedings against them, shall take place within thirty (30) days of the court order for committal to a mental health facility and referral to the Review Board.</p> <p>(2) The Review Board shall sit in panels of three members, of which at least one must be a medical practitioner with a specialist licence in psychiatry, psychology or mental health, and one other has education or practical experience in the field of social work, and conduct hearings in the mental health facility at which an offender is detained.</p> <p>(3) Review Board hearings shall be conducted informally, without adherence to the strict rules of evidence under the Evidence Act.</p> <p>(4) Hearings shall be open to the public, but the Review Board may exclude the public for all or part of a hearing if it is in the best interests of the offender and not contrary to public interest.</p> <p>(5) The parties at a Review Board hearing are –</p> <ul style="list-style-type: none">(a) the offender;(b) the person in charge of the mental health facility; and(c) the prosecutor who acted in the court or court martial proceeding at which the offender was found to be of unsound mind, guilty but insane or unable to understand the proceedings or, if that prosecutor is unavailable, any other prosecutor. <p>(6) The offender has the right to be represented by counsel at Review Board hearings, and if the offender does not have the capacity or means to engage counsel, the Power of Mercy Case Manager shall arrange for counsel to be provided at the expense of the State, in accordance with Article 50(2)(h) of the Constitution.</p> <p>(7) The person in charge of the mental health facility may also choose</p>

	<p>to be represented by counsel.</p> <p>(8) In every case the Mental Health Review Board shall –</p> <ul style="list-style-type: none">(a) provide substantive reasons for its disposition in writing; and(b) provide the decision and written reasons to the parties and to any person who has legal representative capacity in relation to the offender.
<p>Factors to be considered by the Review Board</p>	<p>64. (1) In making its decisions, the Review Board shall consider –</p> <ul style="list-style-type: none">(a) the need for public safety;(b) the needs of the offender, including the offender’s mental health and the goal of successful reintegration of the offender into society; and(c) whether the offender has access to sufficient support to mitigate any future risk to the offender or any other person. <p>(2) Despite subsection (1), the Review Board shall consider –</p> <ul style="list-style-type: none">(a) the Behavioural Risk Assessment Report in section 62(5); and(b) the record of the court or court martial proceeding in which the offender was found to be of unsound mind, guilty but insane or unable to understand the proceedings.
<p>Review Board Dispositions</p>	<p>65. (1) The Mental Health Review Board shall in making its decisions take into account, the best interests of the offender, having regard to the safety of the offender and the safety of others.</p> <p>(2) Upon consideration of all the information presented at a hearing, the Review Board may make any of the following dispositions –</p> <ul style="list-style-type: none">(a) unconditional release in accordance with (3);(b) conditional release in accordance with (4); or(c) committal to a mental health facility in accordance with (6). <p>(3) If the Mental Health Review Board determines that the offender –</p> <ul style="list-style-type: none">(a) does not raise a serious likelihood of immediate or imminent harm to the offender or to other persons; and(b) has access to a variety of community agencies and services which, together with family or other support, mitigate any future risk to the public, <p>the Review Board may direct that the offender be released unconditionally.</p> <p>(4) If the Mental Health Review Board determines that the offender –</p>

- (a) poses a low or moderate likelihood of immediate or imminent harm to the offender or to other persons; and
- (b) has access to a variety of community agencies and services which, together with family or other support, mitigate future risk to the public,

the Review Board may direct that the offender be released subject to such conditions as the Review Board considers appropriate to mitigate any risk of harm, including –

- (i) reporting to a hospital or mental health facility at designated times;
- (ii) refraining from the use of alcohol or drugs;
- (iii) reporting any change of address; or
- (iv) refraining from contact with any named individual.

(5) An offender released into the community in accordance with subsection (4) shall, be subject to regular supervision by a Probation or Parole Officer that has specialized training in providing support to offenders with mental illness.

(6) If the Mental Health Review Board determines that the offender poses a serious likelihood of immediate or imminent harm to the offender or to other persons, the Review Board shall order that the offender be committed to custody at Mathari Hospital or any other mental health facility designated for the custody, treatment or assessment of an offender with mental illness.

(7) The Review Board shall specify the –

- (a) mental health facility, and in doing so shall, to the greatest extent possible, commit the offender to the mental health facility that is in closest proximity to the offender’s family or other support persons;
- (b) level of security under which the offender shall be detained, which shall be the least amount required to ensure the safety of the offender and other persons; and
- (c) any privileges that may be granted to the offender for access to the community, such as accommodation in the community, if approved at any time by the person-in-charge of the hospital based on actuarial assessment.

	<p>(8) The Review Board shall not commit an offender to undergo treatment, unless the offender has consented to the treatment which shall only be valid if –</p> <ul style="list-style-type: none">(a) evidence supports a finding that the treatment is in the best interests of the offender based on the assessment of a mental health professional, and the consent is free and informed to the extent of the offender’s capacity; or(b) the consent is given on behalf of the offender by a person who has legal representative capacity in respect of the offender. <p>(9) If the offender lacks the capacity to give consent or unreasonably withholds such consent, and the person in charge of a mental health facility where the offender is committed is satisfied that a proposed course of treatment is in the best interests of the offender, having regard to the offender’s safety and the safety of others, the person in charge of the mental health facility may order that the course of treatment be undertaken.</p> <p>(10) The order under subsection (9), shall be supported by written reasons provided to the offender, the offender’s counsel and any other person having legal capacity in respect of the offender.</p>
Review by the Mental Health Review Board.	<p>66. (1) The Review Board shall hold a hearing every twelve (12) months to review any disposition it has made in respect of an offender, and for this purpose may, if necessary, issue a summons requiring the appearance before it of the offender.</p> <p>(2) The purpose of review is to determine whether the circumstances underlying the most recent disposition continue, or whether the disposition ought to be varied or a new disposition made in accordance with any new information presented at the hearing.</p> <p>(3) <i>Ad hoc</i> review hearings may also be held at the request of –</p> <ul style="list-style-type: none">(a) the person in charge of a mental health facility having custody of the offender;(b) the offender;(c) a Probation or Parole Officer having responsibility for supervision of the offender; or(d) any other person, such as a family member or religious advisor, <p>if that person reasonably believes that the offender’s continued committal or conditions of release ought to be reviewed in the best</p>

<p>Cap. 75.</p>	<p>interests of the offender or for the safety of any other person.</p> <p>(4) The process for review is the same as for the initial disposition, and shall include a report on the offender’s progress, completed by –</p> <ul style="list-style-type: none"> (a) the person in charge of the mental health facility where the offender is detained or was initially committed; and (b) by the Probation or Parole Officer responsible for supervision of the offender in the community, as relevant in the circumstances. <p>(5) On review, the Review Board may, in the interests of the safety of the offender and of any other person or the public –</p> <ul style="list-style-type: none"> (a) confirm the disposition for a further twelve (12) months; (b) vary any aspect of a disposition; (c) replace a disposition with a new disposition; or (d) direct that the offender be finally discharged if the Review Board is satisfied that the offender does not pose any risk to any person and has successfully reintegrated into society. <p>(6) Despite subsection (5), in the case of an offender who is referred to the Review Board on the basis of a finding that the offender is of unsound mind and consequently incapable of making a defence in accordance with section 162 of the Criminal Procedure Code, the Review Board shall refer the offender back to the court to proceed in accordance with section 163 of the Criminal Procedure Code.</p>
<p>Judicial Review</p>	<p>67. The following are subject to judicial review –</p> <ul style="list-style-type: none"> (a) dispositions of the Mental Health Review Board; and (b) an order for treatment of an offender made by the person in charge of a mental health facility where the offender is committed in accordance with subsection 65(9).
<p>Awareness and capacity building of public and private actors</p>	<p style="text-align: center;">PART VIII — AWARENESS, CAPACITY BUILDING, PUBLIC EDUCATION AND ACCESS TO INFORMATION</p> <p>68. (1) The Committee shall conduct outreach, education and training targeted to officials, administrators and other actors who may be involved in oversight, coordination or implementation of the power of mercy under this Act, including their responsibility to promote the successful rehabilitation and reintegration of offenders, and to protect the safety of victims and the public.</p> <p>(2) Despite subsection (1), the Committee may work with any public or private sector entity involved in the criminal justice sector to promote</p>

	<p>the inclusion in training or education curricula of awareness and capacity building on the power of mercy, including —</p> <ul style="list-style-type: none"> (a) eligibility of offenders for pardon, parole, commutation and remission; (b) the process for granting each power of mercy; (c) the process for initial disposition and review by the Mental Health Review Board; (d) the rights of victims under this Act; and (e) the importance of community support for the rehabilitation and reintegration of offenders towards the promotion and maintenance of a just and peaceful society.
Sensitization of Offenders	<p>69. The Power of Mercy Case Manager is responsible for sensitization of offenders and correctional or other officials in the prison or mental health facility where the officer is stationed, and may engage other members of the Secretariat or the Committee to assist in doing so.</p>
Public Education	<p>70. The Committee shall conduct public education about the power of mercy and procedures relating to petitions for its exercise.</p> <p>(2) Informational materials shall be made available in English and Kiswahili, upon request through Kenyan Sign Language, in Braille or in audio format, and shall be disseminated as widely as possible including through electronic means and the media.</p>
Advisory Services	<p>71. (1) The Committee may develop and issue guidelines, advisories and circulars on implementation of this Act by government departments and agencies, other public actors in the criminal justice sector, and non-governmental organizations and private entities providing rehabilitation and reintegration support to offenders.</p> <p>(2) Any government department or agency, or private entity may seek advice from the Committee on any matter relating to implementation of this Act.</p>
Access to information held by the Committee and its decision-making entities	<p>72. (1) Subject to Article 35 of the Constitution and the law relating to access to information, the Committee shall proactively publish and publicize any information within its mandate including –</p> <ul style="list-style-type: none"> (a) information about the Committee, its members, and the processes of its decision-making entities; (b) the data collected in accordance with section 74; and (c) information on the rehabilitation and reintegration supports provided to released offenders by all State, non-governmental

	<p>and private entities, including data on the number of offenders served by each entity or facility.</p> <p>(2) A request by any person for information regarding the power of mercy —</p> <p>(a) shall be addressed to the Secretary or any other person the Secretary may designate for that purpose; and</p> <p>(b) may be subject to the payment of a reasonable fee in instances where the Committee incurs an expense in providing the information.</p> <p>(3) Subject to Article 35 of the Constitution and the law relating to access to information, the Committee and its decision-making entities may decline to give information to a person where —</p> <p>(a) giving the information may endanger the safety or life of any person;</p> <p>(b) the information requested is at a deliberative stage; or</p> <p>(c) the person unreasonably fails to pay the prescribed fee.</p> <p>(4) The right of access to information under Article 35 of the Constitution and the law relating to access to information is limited only to the nature and extent specified under sub-section (3).</p>
Decisions Database	<p>73. (1) The Committee shall create and maintain an electronic database of National Parole Board decisions, and make the database publicly accessible either through the Committee’s website, the Kenya Law Reporting database/website, or any other reasonable means by which the database may be accessed and searched.</p> <p>(2) Decisions involving vulnerable victims such as children, or any other person whose privacy interests may outweigh the public interest in access to information, may be anonymized through the use of acronyms or other means of protecting a person’s identity while facilitating access to non-confidential information.</p>
	<p style="text-align: center;">PART IX — REPORTING AND RECORD KEEPING</p>
Data Collection	<p>74. (1) The Committee shall collect and publish data on the Committee’s processes and outcomes, including –</p> <p>(a) the number of petitions received in relation to each power of mercy;</p> <p>(b) the number of hearings held by its decision-making entities;</p>

	<p>(c) the number of decisions made by its decision-making entities; and</p> <p>(d) the number of offenders –</p> <ul style="list-style-type: none">(i) pardoned, whether free or conditional;(ii) commuted, whether on an individual or group basis;(iii) released on remission, whether free or partial;(iv) released on parole;(v) reviewed by the Review Board and committed or released; and(vi) subject to supervision in the community. <p>(2) With respect to (1)(a) and (d), the Committee shall collect and publish data on the types of offences and number of years served by offenders for each of the powers of mercy, and ensure that data is disaggregated and published with reference to characteristics of the offenders including age, disability, illness or other factor that may underlie a decision to grant mercy, ethnicity, religion and level of education.</p>
Record Keeping	<p>75. (1) The Committee shall create and securely maintain an individual file for each petitioner, with subfiles as necessary for separate petitions and for any review, including all –</p> <ul style="list-style-type: none">(a) reports and supporting documents submitted for consideration of the decision-making entities;(b) submissions made by hearing participants including Victim Impact Statements;(c) records of deliberations of the decision-making entity; and(d) the final decision made in respect of each petition or review. <p>(2) With the exception of final decisions which shall be made available to the public as provided for in section 73, all other records contained in a petitioner’s file including sensitive information of a personal nature about offenders, victims, their families and other community members, may be kept confidential and excluded from disclosure in accordance with section 6 of the Access to Information Act, 2016 as may be amended from time to time.</p> <p>(3) Any question on whether access to any information contained in a petitioner’s file should be provided to any person, shall be directed to the designated Access to Information Officer, and decisions on requests for access shall be made with reference to the Access to Information Act, 2016.</p>

Annual Reports	<p>76. (1) The Committee shall prepare and submit to the President and to Parliament a report of its activities and outcomes at the end of each financial year.</p> <p>(2) The Annual Report shall include—</p> <ul style="list-style-type: none">(a) information on the members of the Committee, the National Parole Board, and the Mental Health Review Board, including their terms;(b) data on the number of petitions received, processed and determined for each of the powers of mercy, disaggregated by type of offence, length of time served, and characteristics of the petitioners including sex, age, disability, ethnicity, religion and level of education;(c) information on the number and type of decisions made by the Committee and its decision-making entities;(d) information on the rehabilitation and reintegration supports available to released offenders by State, non-governmental and private entities;(e) information on partnerships and collaboration with stakeholders; and(f) financial statements of the Committee. <p>(2) The Committee shall submit the Annual Report to the President and Parliament within three months after the end of the financial year to which it relates.</p> <p>(3) The Committee shall cause the Annual Report to be published accordance with section 72(1).</p>
Annual estimates	<p>77. (1) At least three months before the commencement of each financial year, the Committee shall cause to be prepared estimates of the administrative costs of its decision-making entities for that year.</p> <p>(2) The annual estimates shall make provision for all estimated expenditures of the decision-making entities for the financial year concerned, and in particular shall provide for the—</p> <ul style="list-style-type: none">(a) payment of the salaries, allowances and other charges in respect of the Secretariat and Power of Mercy Case Managers;(b) payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Secretariat and the Power of Mercy Case Managers;

	<p>(c) proper maintenance of the facilities of the Committee, including any contributions by the Committee to prisons or mental health facilities for construction and maintenance of facilities where hearings are held;</p> <p>(d) payment of administrative costs and sitting allowances of the National Parole Board and the Mental Health Review Board; and</p> <p>(e) creation of such reserve funds to meet future or contingent liabilities in respect of any matters as the Secretary may consider appropriate.</p> <p>(3) The annual estimates shall be approved by the Committee before the commencement of the financial year to which they relate and shall be submitted to the Office of the President for approval.</p> <p>(4) The Office of the President shall submit the approved annual estimates to the National Treasury in the form and manner directed by the National Treasury, with a copy to the Controller of Budget.</p>
<p>Accounts and audit</p>	<p>78. (1) The Committee shall cause to be kept all proper books and records of accounts of the income, expenditure, assets and liabilities of the Committee, including its decision-making entities.</p> <p>(2) The Secretary shall prepare and submit quarterly financial reports to the Committee.</p> <p>(3) Within three months after the end of each financial year the Secretary shall prepare accounts and an annual financial report for the approval of the Committee and submission to the Office of the President.</p> <p>(4) The accounts of the Committee shall be audited annually by the office of the Auditor General and the report submitted to Parliament.</p>
<p>PART X — MISCELLANEOUS</p>	
<p>Duty to cooperate to promote rehabilitation, reintegration and public safety</p>	<p>79. It is the duty of every person, department, agency and non-governmental organization involved in the criminal justice sector, whether public or private, to cooperate with the Committee and its decision-making entities to promote the rehabilitation and reintegration of offenders, and to protect the safety of the public.</p>
<p>Conflict of Interest</p>	<p>80. (1) A member of the Committee, and any member of the decision-making entities, who has a direct or indirect personal interest in a matter being considered or to be considered by the Committee or</p>

	<p>decision-making entity shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to their knowledge, disclose the nature of the interest to the Committee.</p> <p>(2) A disclosure of any such interest in a matter shall be recorded in the minutes of the meeting of the Committee and the member shall not be present while that matter is being dealt with and shall not take part in any deliberations or vote relating to the matter.</p> <p>(3) No member or staff of the Committee or of its decision-making entities, including their family members, shall transact any business or trade with the Committee.</p> <p>(4) A person who contravenes sub-section (1) or (3) commits an offence and shall be liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding ten years, or to both.</p>
Confidentiality	<p>81. (1) Members of the Committee and Secretariat shall not discuss the decisions of the Committee or its decision-making entities, or disclose the information that those decisions are based upon, with any person other than other members of the Committee, decision-making entity, Secretariat staff, or Office of the President in appropriate circumstances, unless legally required to disclose the information in accordance with the Access to Information Act, 2016 or by order of a court.</p> <p>(2) Every member of the Committee and its decision-making entities, and all other staff of the Secretariat who may receive or process personal information shall sign a confidentiality agreement.</p>
Legal proceedings. Cap. 40.	<p>82. Proceedings against the Committee shall be deemed to be proceedings against the government and shall be subject to the Government Proceedings Act.</p>
Protection from personal liability	<p>83. No member of the Committee or its decision-making entities, or person working under the direction of the Committee or Secretary shall be liable to any action, claim, suit or demand whether criminal or civil in respect of anything done or omitted to be done by that person in good faith in the exercise or purported exercise of a power, function or duty conferred by or under this Act.</p>
General Penalty	<p>84. A person who contravenes the provisions of this Act commits an offence and shall be liable on conviction to a fine not exceeding one</p>

	<p>million shillings, or imprisonment for a term not exceeding five years, or to both.</p>
Forms	<p>85. (1) The Committee shall, in consultation with the Attorney General, prescribe forms to be used for the purposes of filing petitions and issuing notices, decisions and summons issued by the Committee and its decision-making entities under this Act.</p> <p>(2) Notwithstanding sub-section (1), an instrument or document that deviates from the prescribed form shall not be void by reason of a deviation and such deviation shall not affect the substance of the instrument or document, unless it is calculated to mislead.</p>
Regulations	<p>86. (1) The Committee may, with the approval of the Attorney General, make Regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular, may make Regulations specifying —</p> <ul style="list-style-type: none">(a) the manner in which petitions under this Act shall be made;(b) the oath or affirmation of office to be taken by members of the Committee and its decision-making entities;(c) the measures to be taken by public entities and the Judiciary to facilitate the exercise by persons of their rights under this Act, including Parole Eligibility Guidelines;(d) the procedures for requesting review by the Review Sub-Committee, the Parole Board or the Mental Health Review Board;(e) such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration; and(f) prescribing anything which may be or is required to be prescribed under this Act. <p>(2) For the purposes of Article 94(6) of the Constitution—</p> <ul style="list-style-type: none">(a) the purpose and objective of the delegation under this section is to enable the Committee to make regulations for better carrying into effect the provisions of this Act;(b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;(c) the principles and standards applicable to the delegated power referred to under this section are those found in—<ul style="list-style-type: none">(i) the Statutory Instruments Act, No. 23 of 2013;

	<p>(ii) the Interpretation and General Provisions Act, Cap 2.</p> <p>(iii) the general rules of international law as specified under Article 2(5) of the Constitution; and</p> <p>(iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.</p>
Consequential Amendments	87. The laws listed in the Schedule are amended in the manner specified in the Schedule.
Power of Mercy Act, 2011	88. The Power of Mercy Act, 2011 is repealed.
Transition	<p>89. The Committee existing prior to the commencement of this Act, shall continue to exist until the expiry of the terms of the members.</p> <p>(2) Despite subsection (1), all the staff who were serving at the former Committee shall on the commencement of this Act be given an option to elect to serve as staff of the Committee, or be redeployed in the Public Service within a period of one year.</p> <p>(3) Assets and liabilities of the former Committee shall be deemed to be assets and liabilities of the Committee under this Act.</p> <p>(4) All legal proceedings by and against the former Committee shall be deemed to be legal proceedings by and against the Committee under this Act.</p> <p>(5) For purposes of this section "former Committee" means the Committee established under the repealed Power of Mercy Act, 2011.</p>

SCHEDULE		
S. 87		
Consequential Amendments		
Written Law	Provision	Amendment
Criminal Procedure Code, Cap. 75.	Section 162	<p>Section 162 is amended by deleting subsections (3) and (4) and substituting therefor the following:</p> <p>(3) The court shall order that the accused be detained in a mental health facility for a period of thirty (30) days, for the purpose of conducting a Behavioural Risk Assessment, and the court shall issue a warrant in</p>

		<p>accordance with that order, and the warrant shall be sufficient authority for the detention of the accused until the matter may be reviewed by the Mental Health Review Board in accordance with (4).</p> <p>(4) The court shall further refer the matter to the Mental Health Review Board for review and disposition in accordance with the Power of Mercy Act, 2021, and for this purpose shall transmit the court record or a certified copy thereof to the Power of Mercy Advisory Committee, together with any recommendation or observations on the case that the court may think fit to make, for consideration by the Mental Health Review Board.</p>
	Section 162(5)	Repeal
	Section 163	<p>Section 163 is amended by deleting subsections (1) and (3) and substituting therefor the following:</p> <p>(1) If a person referred to the Mental Health Review Board under section 162 or section 280 is subsequently found to be capable of making his defence, the Mental Health Review Board shall refer the person back to the court for proceeding in accordance with this section.</p> <p>(3) In the former case, the court shall thereupon cause the person to be brought in custody before it, and shall deal with him in the manner provided by section 164; otherwise the court shall forthwith issue an order that the person be discharged in respect of the proceedings brought against him and thereupon he shall be released, but the discharge and release shall not operate as a bar to any subsequent proceedings against him on account of the same facts.</p>
	Section 164	<p>Section 164 is amended by deleting the section and substituting therefor the following:</p> <p>Wherever the Director of Public Prosecutions informs the court that it is the intention of the Republic that proceedings against a person referred to the Mental Health Review Board under section 162 or section 280</p>

		shall continue, the court shall resume trial and require the accused to appear or be brought before the court, whereupon, if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.
	Section 166	<p>Section 166 is amended by deleting subsections (2) and (3), and substituting therefor the following:</p> <p>(2) When a special finding is so made, the court shall refer the case to the Mental Health Review Board for disposition in accordance with the Power of Mercy Act, 2021, and shall meanwhile order the offender to be committed to a mental health facility for a period of thirty (30) days for the purpose of undergoing a Behavioural Risk Assessment.</p> <p>(3) The court shall forward to the Power of Mercy Advisory Committee a copy of the notes of evidence taken at the trial, together with any recommendation or observations on the case that the court may think fit to make, for consideration by the Mental Health Review Board.</p>
	Section 166 (4), (5), (6), (7)	Repeal
	Section 167	<p>Section 167 is amended by deleting subsections 1 and 2 and substituting therefor the following:</p> <p>(1) If the accused, though not insane, cannot be made to understand the proceedings, the court shall proceed to hear the evidence and if, at the close of the evidence for the prosecution, and if the defence has been called upon of any evidence for the defence, the court is of the opinion that the evidence which it has heard would not justify a conviction, it shall acquit and discharge the accused, but if the court is of the opinion that the evidence which it has heard would justify a conviction it shall order that the accused be detained in a mental health facility for a period of thirty (30) days for the purpose of conducting a Behavioural Risk Assessment in</p>

		<p>accordance with the Power of Mercy Act, 2021, and the court shall issue a warrant in accordance with that order, and the warrant shall be sufficient authority for the detention of the accused until the matter may be reviewed by the Mental Health Review Board in accordance with (2).</p> <p>(2) The court shall further refer the matter to the Mental Health Review Board for review and disposition in accordance with the Power of Mercy Act, 2021, and in doing so shall forward to the Power of Mercy Advisory Committee a copy of the notes of evidence taken at the trial, together with any recommendation or observations on the case that the court may think fit to make, for consideration by the Mental Health Review Board.</p>
	Section 167 (3) and (4)	Repeal
	Section 280	<p>Section 280 is amended by deleting subsections (1) and (2) and substituting therefor the following:</p> <p>(1) If an accused person being arraigned upon an information stands mute of malice, or neither will nor by reason of infirmity can, answer directly to the information, the court may order the Registrar or other officer of the court to enter a plea of “not guilty” on behalf of the accused person, and the plea so entered shall have the same force and effect as if the accused person had actually pleaded it, and the court shall thereupon proceed to try whether the accused person be of sound or unsound mind in accordance with section 162.</p> <p>(2) If the court is of the opinion that the accused is of sound mind and consequently capable of making his defence, it shall proceed with a trial.</p>
	section 343	<p>The heading immediately above section 343 is amended by deleting the heading and replacing it with PAROLE</p> <p>Section 343 is amended by deleting the marginal note and substituting therefor the following:</p>

		<p>343. Persons subject to parole</p> <p>Section 343 is further amended by deleting all of the subsections and substituting therefor the following:</p> <p>(1) This section applies to –</p> <p>(a) offenders who are sentenced to imprisonment for life; and</p> <p>(b) offenders who have been designated as ‘high risk’ in accordance with section 322A.</p> <p>(2) For the purposes of this Act, ‘parole’ means the early release from imprisonment before the expiry of an offender’s sentence, with authority to serve the remainder of the sentence at liberty, subject to supervision by a Parole Officer and any further conditions that may be imposed by the National Parole Board.</p> <p>(3) The purpose of parole is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of early release from imprisonment that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding persons.</p> <p>(4) Save as may be expressly provided by this or any other law, and subject to (6) and (7) below, an offender is eligible for parole on the day after which the offender has served two thirds of the prescribed sentence.</p> <p>(5) Two thirds of the prescribed sentence in respect of a person sentenced to imprisonment for life is calculated based on a period of twenty-five (25) years.</p> <p>(6) Despite subsections (4) and (5) above, a court imposing a sentence on an offender shall increase or decrease the period of ineligibility for parole if the court is satisfied, having regard to the circumstances of the offence and the character and circumstances of the</p>
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offender, that the objectives of deterrence, rehabilitation, accountability for one's actions, society protection, retribution and denunciation may be met by any other period of ineligibility.

(7) In determining the date upon which an offender will become eligible for parole in accordance with this section, the court shall –

- (c) have regard to the Parole Eligibility Guidelines in the Third Schedule; and
- (d) include any period of pre-sentence custody.

(8) A court that increases or decreases the period of ineligibility for parole in accordance with subsection (6) shall give reasons for its decision in writing.

sections 344, 344A and 345 Sections 344, 344A and 345 are repealed

NEW section 322A – The Act is amended by inserting a new section 322A as follows:

Designation as High-Risk Offender

(1) If an accused person has been convicted of –

- (a) a felony offence for which life imprisonment is a sentencing option;
- (b) two or more felonies for which the person has served a custodial sentence of three or more years;
- (c) an offence under section 296(1), 297(1), 308 or 322 of the Penal Code; or
- (d) an offence under the Prevention of Terrorism Act, Prevention of Torture Act, or the Sexual Offences Act,

and upon reviewing all of the evidence the court is satisfied that the offence was aggravated by –

- i. the use or attempted use of violence against another person;
- ii. conduct that endangered or was likely to endanger the life or safety of another person; or
- iii. conduct that inflicted or was likely to inflict severe psychological damage on another person,

and in convicting the offender, the court found that harm did in fact occur in the commission of the crime, the

advocate for the prosecution may, at the time of conviction and before passing of sentence, apply for a hearing to determine whether the convicted person should be designated as a 'high risk' offender.

(2) Upon application by the advocate for the prosecution for a 'high risk offender' designation, the court shall order that the convicted person undergo a behavioural risk assessment to review the person's mental health and functioning, cognitive and memory functioning, and general psychological diagnostics to assess for mental illness.

(3) If the person has been convicted of an offence under the Sexual Offences Act 2006, as may be amended, the court shall order additional testing to assess for deviant sexual preferences.

(3) The behavioural risk assessment shall be undertaken by a mental health expert with experience in criminal justice, for example a forensic psychiatrist, using a multi-disciplinary approach with input from social workers, psychologists, occupational therapists or correctional officers who have had the opportunity to interact with the convicted person either in remand or in the community, in addition to using actuarial assessment tools.

(4) A Behavioural Risk Assessment Report shall be completed and filed with the court and copies provided to the prosecution and the defence within ninety (90) days of the court's order, which Report shall include an assessment of the following –

- (a) the extent to which the offender thinks in a criminal manner;
- (b) the extent to which the offender, in his or her environment, is surrounded by individuals involved in criminal activity;
- (c) the offender's temperamental disposition as it relates to anti-social tendencies and criminal propensities;

- (d) the offender's level of social supports within the community;
- (e) problems the offender experiences such as substance abuse or having a deviant sexual preference;
- (f) the offender's general ability to access community resources;
- (g) the offender's criminal history, focusing on the presence or absence of the behaviour in (1)(a), (b), or (c) above;
- (h) the offender's treatment and counseling history, if any;
- (i) the offender's level of social competence;
- (j) the offender's problem resolution skills;
- (k) whether the offender has a sufficient level of life-skills to function in the community; and
- (l) the mechanisms the offender uses to cope with stress and the perceived utility of these mechanisms.

(5) Upon receipt of the Behavioural Risk Assessment Report, the court shall hold a hearing to determine whether the offender should be designated as 'high risk', at which hearing the advocate for the prosecution shall call as a witness the person who completed and filed the behavioural Risk Assessment Report, and may call any other witnesses to present physical and behavioural evidence that establishes a clear pattern of historical dangerous behaviour, such as escalating incidents of violence, that culminated in commission of the offence, which may include other offences for which the offender may or may not have been charged or prosecuted. The defence may call its own witnesses, including a mental health expert, in defence.

- (6) In determining whether there are reasonable grounds to find that the convicted person poses a potential serious risk to any person, the court shall consider whether –
- (a) the offender has a pattern of offending over time;
 - (b) the offender has a clearly demonstrated inability

		<p>to control sexual impulses;</p> <p>(c) the offence was aggravated by a significant degree of violence or hate/discrimination; or</p> <p>(d) the victim was particularly vulnerable or there were multiple victims.</p> <p>(7) Based on the Behavioural Risk Assessment Report and any additional evidence presented, including evidence of victims, the court shall determine whether the evidence proves beyond a reasonable doubt that –</p> <p>(a) the offender has engaged in a pattern of repetitive behaviour that shows a lack of restraint and a likelihood of causing death or injury or severe psychological damage to other persons;</p> <p>(b) the offender has engaged in a pattern of aggressive</p>
		<p>behaviour that exhibits substantial indifference to the foreseeable consequences of that behaviour;</p>
		<p>(c) the offender’s crime or offending history shows that the offender is not inhibited by normal standards of behavioural restraint; or</p> <p>(d) the offender, being convicted of a sexual offence, has shown a failure to control sexual impulses and as a result is likely to cause injury or pain, or psychological distress, to other persons, and the offender poses a threat to the life, safety or physical or mental well-being of other persons.</p> <p>(8) If the court determines that the offender poses a potential risk to any person and it is in the interests of public safety to provide enhanced supervision and support, and more strict conditions, upon release, the court shall designate the offender as a ‘high risk offender’ and shall, in passing a sentence of imprisonment, determine the offender’s parole eligibility in accordance with section 343 and the Third Schedule.</p> <p>(9) If the court determines that the convicted person is not a high risk offender in accordance with this section, the court shall proceed to pass an appropriate sentence for the offence in accordance with the law.</p>

	THIRD SCHEDULE	The Act is amended by inserting the following new THIRD SCHEDULE –
	THIRD SCHEDULE PAROLE ELIGIBILITY GUIDELINES (OFFENCES LIABLE TO IMPRISONMENT FOR LIFE and HIGH RISK OFFENDER DESIGNATION)	

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OFFENCE	CATEGORY	NATURE OF OFFENCE	ELIGIBILITY FOR PAROLE
<p>OFFENCES THAT CAUSE DEATH including –</p> <ul style="list-style-type: none"> • Murder (s. 204 Penal Code) • Manslaughter (s.205 Penal Code) • aiding suicide (s.225 Penal Code) • killing unborn child (s.228 Penal Code) • Genocide (s.6 International Crimes Act, 2008) • grave breach of Geneva Convention involving wilful killing (s.3 Geneva Conventions Act) • Commission of a terrorist act that results in death (s.4(2) Prevention of Terrorism Act, 2012) • organised criminal activities resulting in death (s.4(2) Prevention of Organised Crimes Act, 2010) • Female Genital Mutilation 	<p>First Category *high risk offender</p>	<p>Intentional and premeditated, and aggravated by any one or more of the following facts:</p> <ul style="list-style-type: none"> • vulnerable victim (child, elderly or persons with disability); • victim was a public officer in the course of duty; • hate (eg. the offence was motivated by hate based on the victim’s religion, sexual orientation, race, ethnicity); or • multiple victims (includes genocide, acts of terrorism causing death, and grave breach of Geneva Convention involving wilful killing) 	<p>After 30 years</p>
	<p>Second Category</p>	<p>Planned and intentional but not aggravated (includes aiding suicide, killing of unborn child)</p>	<p>After 25 years</p>
	<p>Third Category</p>	<p>Intentional but not premeditated</p>	<p>After 20 years</p>
	<p>Fourth Category</p>	<p>Not intentional (manslaughter)</p>	<p>After serving 2/3 of the sentence</p>

<p>causing death (s.19 Prevention of Female Genital Mutilation Act)</p> <ul style="list-style-type: none"> • Torture resulting in death (s.5 Prevention of Torture Act, 2016) • trafficking that results in death (s.9 Counter-Trafficking in Persons Act, 2010) 			
<p>SEXUAL OFFENCES including –</p> <ul style="list-style-type: none"> • Rape (s.3 Sexual Offences Act) • Attempted Rape (s.4 Sexual Offences Act) • Incest (s.20(1) Sexual Offences Act) • Sexual Assault (s.5 Sexual Offences Act) • defilement (s.8 Sexual Offences Act) • gang rape (s.10 Sexual Offences Act) 	<p>First Category *high risk offender</p> <p>Second Category</p>	<p>Includes aggravated circumstances such as defilement, child victim, gang rape, using a dangerous weapon,² lasting physical injury, victim is person with mental disability, victim is an elderly person, intentional transmission of HIV, FGM</p> <p>None of the circumstances mentioned above</p>	<p>After 30 years</p> <p>After 20 years</p>
<ul style="list-style-type: none"> • indecent act with child or adult (s.11 Sexual Offences Act) 	<p>possible designation as a high risk offender in appropriate circumstances.</p>	<p>with a child (s.12 Sexual Offences Act)</p>	

¹ While FGM is not an offence that is explicitly subject to imprisonment for life under the *Prohibition of Female Genital Mutilation Act*, given that it is gender-based sexual violence that has potential for serious and lasting harmful consequences to a child victim, and life imprisonment is a sentencing option, it is included in this list for possible designation as a high risk offender in appropriate circumstances.

² For the purposes of these *Guidelines*, a 'dangerous weapon' means any thing used, designed to be used or intended for use in causing death or grievous harm to any person and, without restricting the generality of the foregoing, includes a spear, sword, panga, knife or firearm.

<ul style="list-style-type: none">• child sex tourism (s.14 Sexual Offences Act)• child prostitution (s.15 Sexual Offences Act)• child pornography (s.16 Sexual Offences Act)• Sexual communication with a child (s.16A Sexual Offences Act)• Prostitution of persons with mental disabilities (s.19 Sexual Offences Act)• Incest (ss. 20 and 21 Sexual Offences Act)• Sexual offences relating to position of authority and persons in position of trust (s.24 Sexual Offences Act)• deliberate transmission of HIV or any other life threatening sexually transmitted disease (s.26(1) Sexual Offences Act)• transmission (whether intention or not) of HIV in the course of committing any other sexual offence (s.26(9) Sexual			
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<p>Offences Act)</p> <ul style="list-style-type: none"> • Administering a substance with intent (s.27 Sexual Offences Act) • Distribution of a substance by juristic person (s.28 Sexual Offences Act) • Cultural and religious sexual offences (s.29 Sexual Offences Act) • Female Genital Mutilation (Prohibition of Female Genital Mutilation Act)¹ 			
<p>CRIMES AGAINST THE STATE including –</p> <ul style="list-style-type: none"> • Treason (ss. 40(3) and 42 Penal Code) • Treasonable felony (s.43 Penal Code) • Treachery (s.43A Penal Code) • Promoting War (s.44 Penal Code) • Inciting Mutiny (s.47 Penal Code) 	<p>First Category *high risk offender</p> <p>Second Category</p> <p>Third Category</p>	<p>Committed by the directing mind³ and/or using a dangerous weapon and/or causing grievous harm</p> <p>Simple commission and/or resulting in injury that is not grievous harm</p> <p>Aiding and Abetting</p>	<p>After 25 years</p> <p>After 20 years</p> <p>After serving 2/3 of the sentence</p>

³ For the purposes of these *Guidelines*, a court may determine that an accused person is the ‘directing mind’ if the person, though not a direct perpetrator, but through intentional act or omission, orders, solicits or induces - including providing the means for - commission of the crime, which in fact occurs or is attempted.

<ul style="list-style-type: none"> rescue from lawful custody (s.122(1) Penal Code) Making Unlawful Oaths to commit capital offences (s.59 Penal Code) Administering Unlawful Oath to commit capital offences (s.60 Penal Code) Direction in the commission of a terrorist act (s.12 Prevention of Terrorism Act, 2012) 			
<p>CRIMES AGAINST PUBLIC ORDER including –</p> <ul style="list-style-type: none"> rioting after proclamation (s.83 Penal Code) preventing or obstructing proclamation (s.84 Penal Code) rioters demolishing buildings (s.85 Penal Code) intentionally endangering safety of person travelling by railway (s.233 Penal Code) unauthorized possession of specified firearms (s.4A Firearms Act) 	<p>First Category *high risk offender</p> <p>Second Category</p> <p>Third Category</p>	<p>Committed by the directing mind and/or using a dangerous weapon and/or causing grievous harm</p> <p>Commission causing injury to persons that is not grievous harm and/or using a weapon that is not a dangerous weapon and/or damage to property</p> <p>Simple participation</p>	<p>After 25 years</p> <p>After 20 years</p> <p>After serving 2/3 of the sentence</p>
<p>CRIMES AGAINST THE PERSON</p>	<p>First Category</p>	<p>Committed by the directing mind and/or using a</p>	<p>After 25 years</p>

<p>including –</p> <ul style="list-style-type: none"> • attempted murder (ss.220 and 221 Penal Code) • accessory after the fact to murder (s.222 Penal Code) • disabling to commit felony or misdemeanour (s.229 Penal Code) • stupefying to commit felony or misdemeanour (s.230 Penal Code) • acts intended to cause grievous harm or to prevent arrest (s.231 Penal Code) • preventing escape from wreck (s.232 Penal Code) • intentionally endangering safety of person travelling by railway (s.233 Penal Code) • grievous harm (s.234 Penal Code) • robbery with violence (s.296(2) Penal Code) • attempted robbery with violence (s.297(2) Penal Code) • trafficking in persons for 	<p>*high risk offender</p> <p>Second Category</p> <p>Third Category</p> <p>Fourth category</p>	<p>dangerous weapon and/or causing grievous harm</p> <p>Causing injury to persons that is not grievous harm and/or using a weapon that is not a dangerous weapon and/or causing damage to property</p> <p>Simple commission</p> <p>Aiding, abetting or attempting</p>	<p>After 20 years</p> <p>After serving 2/3 of the sentence</p> <p>After serving 2/3 of the sentence</p>
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<p>exploitation (s.3(5) Counter-Trafficking in Persons Act, 2010)</p> <ul style="list-style-type: none"> financing, aiding or abetting trafficking in persons (s.3(6) Counter-Trafficking in Persons Act, 2010) acts that promote child trafficking (s.4 Counter-Trafficking in Persons Act, 2010) promotion of trafficking in persons (s.5 Counter-Trafficking in Persons Act, 2010) trafficking that results in permanent or life-threatening bodily harm (s.9 Counter-Trafficking in Persons Act, 2010) 			
<p>CRIMES AGAINST PROPERTY including –</p> <ul style="list-style-type: none"> arson (s.332 Penal Code) malicious injuries to property (s.339 (2) and (3) Penal Code) sabotage (s.343 Penal Code) 	<p>First Category</p> <p>Second Category</p>	<p>Commission resulting in damage to public property and/or injury to a person</p> <p>Commission resulting in damage to private property</p>	<p>After 20 years</p> <p>After serving 2/3 of the sentence</p>
<p>OFFENCES RELATING TO FRAUD including –</p> <ul style="list-style-type: none"> forgery of wills etc. (s.350 Penal Code) 	<p>First Category</p> <p>Second Category</p>	<p>Fraud involving 5 million Ksh and above</p> <p>Fraud involving 1 million to 5 million Ksh and</p>	<p>After serving 2/3 of the sentence</p> <p>After serving 2/3 of the</p>

<ul style="list-style-type: none"> • counterfeiting coin (s.365 Penal Code) • preparation for coining (s.366 Penal Code) 	Third Category	<p>above</p> <p>Fraud involving less than 1 million Ksh</p>	<p>sentence</p> <p>After serving 2/3 of the sentence</p>
<p>MILITARY OFFENCES under the <i>Kenya Defence Forces Act, 2012</i> including –</p> <ul style="list-style-type: none"> • aiding the enemy with intent/otherwise (s.58) • communication with enemy with intent/otherwise (s.59) • spying (s.60) • traitorous offences by service member or officer when in action (s.61(2)(a)) • offences by service member or officer when in action if committed in ‘cowardice’ (s.61(2)(b)) • offences by a person in command when in action if committed traitorously and with intent to assist the enemy (s.62(2)(a)) • offences by a person in command when in action committed otherwise than as above 	<p>First Category</p> <p>Second Category</p> <p>Third Category</p>	<p>Committed by the directing mind (e.g. a superior officer), and/or by an Officer, and/or with intent to assist the enemy, and/or resulting in death</p> <p>Active participation</p> <p>Passive participation e.g. failing to suppress mutiny or otherwise aiding or abetting</p>	<p>After 30 years</p> <p>After 25 years</p> <p>After serving 2/3 of the sentence</p>

<p>(s.62(2)(b))</p> <ul style="list-style-type: none"> • misconduct in action by others with intent to assist enemy (s.63(a)) • misconduct in action by others if committed otherwise than above (s.63(b)) • cowardice (s.64) • offences against morale (s.66) • advocating governmental change by force (s.67) • being captured through disobedience or neglect, and failure to rejoin Defence Forces • mutiny involving violence or threat of violence (s.72(1)(a)) • mutiny to avoid or impede performance of duty (s.72(1)(b)) • incitement to mutiny (s.72(1)(c)) • failure to suppress mutiny with intent to assist enemy • failure to suppress mutiny (s.73(2)(b)) • desertion (s.74) • causing fire (s.90) 			
ORGANIZED CRIME AND DRUG	First Category	Committed by the directing mind and/or using a	After 25 years

<p>RELATED OFFENCES including –</p> <ul style="list-style-type: none"> • trafficking in persons for organized crime (s.10 Counter-Trafficking in Persons Act, 2010) • oath to engage in organised criminal activity (s.5 Prevention of Organised Crimes Act, 2010) • possession of narcotic drug or psychotropic substance, other than cannabis if for other than personal use (s.3(2) Narcotic Drugs and Psychotropic Substances (Control) Act, 1994) • trafficking in narcotic drug or psychotropic substance (s.4 Narcotic Drugs and Psychotropic Substances (Control) Act, 1994) • hijacking and destroying of ships (s.370 Merchant Shipping Act, 2009) • piracy and armed robbery (s.371 Merchant Shipping Act, 2009) • hijacking (s.3 Protection of Aircraft Act, 1970) 	<p>*high risk offender</p>	<p>dangerous weapon and/or causing grievous harm and/or involving amounts of more than 5 million Ksh</p>	<p>After 20 years</p> <p>After serving 2/3 of the sentence</p> <p>After serving 2/3 of the sentence</p>
	<p>Second Category</p>	<p>Participation causing injury to persons that is not grievous harm and/or using a weapon that is not a dangerous weapon and/or causing damage to property, and/or involving amounts between 1 million and 5 million Ksh</p>	
	<p>Third Category</p>	<p>Simple commission and/or involving amounts less than 1 million Ksh</p>	
	<p>Fourth Category</p>	<p>Aiding, abetting or attempting</p>	
<p>WILDLIFE CRIMES under the Wildlife Conservation and</p>	<p>First Category</p>	<p>Committed using a dangerous weapon and/or resulting in grievous harm or death to an animal</p>	<p>After 25 years</p>

Management Act, 2013 – <ul style="list-style-type: none">• offences relating to endangered and threatened species (s.92)• offences relating to sport hunting (s.96)	Second Category	or person Simple commission	After serving 2/3 of the sentence
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Penal Code, Cap. 63.	Section 24	Section 24 is amended by deleting subsection (c) and substituting therefor the following: (c) probation under the Probation of Offenders Act;
	Section 25	Section 25 is amended by deleting subsections (2) and (3) and substituting therefor the following: (2) A sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed the person was under the age of eighteen years.
Prisons Act, Cap. 90.	Section 2	Section 2 is amended by inserting the following definition after the definition of “deserter”: “determinate sentence” means a custodial sentence that ends after a prescribed period of time;
	Section 38	Section 38 is amended by deleting subsection (3) and substituting therefor the following: (3) Upon the expiration of the term of imprisonment to which he has been sentenced, the provisions of section 15 of the Mental Health Act shall apply to any prisoner detained in a mental hospital under this section as if he were detained in accordance with that Act.
	Section 46	Section 46 is amended by deleting the entire section and substituting therefor the following: (1) Remission is early release from imprisonment earned on the basis of industry and good conduct while incarcerated, after serving two thirds of a determinate sentence, whether by one sentence or consecutive sentences, provided that in no case shall remission be granted until a prisoner has served one calendar month. (2) Remission is available to all convicted criminal prisoners serving a determinate sentence, except for

		<p>those designated as ‘high risk offenders’ in accordance with section 322A of the Criminal Procedure Code.</p> <p>(3) For greater clarity, remission is not available to –</p> <ul style="list-style-type: none"> (a) prisoners serving a death sentence; (b) prisoners serving a life sentence; (c) prisoners serving a determinate sentence who have been designated as a ‘high risk offender’; or (d) prisoners detained in a mental health facility for an indeterminate period under the jurisdiction of the Mental Health Review Board. <p>(4) Each convicted criminal prisoner who is eligible to earn remission in accordance with this section shall, on admission be credited with remission equivalent to one third of the custodial sentence to be served.</p> <p>(5) A convicted criminal prisoner may forfeit eligibility for remission as a result of an offence against prison discipline.</p> <p>(6) The procedure for release on remission, including how remission may be forfeited in accordance with subsection (5), shall be as provided for in Part VI of the Power of Mercy Act, 2021.</p>
	Part VIII	Part VIII – COMPULSORY SUPERVISION ORDERS is repealed.
	section 49	<p>Section 49 is amended by deleting the entire section and substituting therefor the following:</p> <p>(1) Parole is early release from imprisonment with authority to serve the remainder of the sentence at liberty, subject to supervision by a Parole Officer and any further conditions that may be imposed by the National Parole Board.</p> <p>(2) Parole is available to all convicted criminal prisoners serving a life sentence, and convicted criminal prisoners serving a determinate sentence who have been designated as a ‘high risk offender’ in accordance with section 322A</p>

		<p>of the Criminal Procedure Code.</p> <p>(3) Eligibility to apply for parole is determined by a court or court martial at the time of sentencing, in accordance with section 343 and the Third Schedule of the Criminal Procedure Code.</p> <p>(4) The procedure for release on parole shall be as provided for in Part IV of the Power of Mercy Act, 2021.</p>
	section 51	Section 51 is amended by deleting subsections (1)(b) and (3)(c).
	section 52	Section 52 is amended by deleting subsection (5)(c).
	section 70A	<p>Section 70A is amended by deleting subsections (1)(f) and (g) and substituting therefor the following:</p> <p>(f) number of times detained;</p> <p>(g) date of eligibility for remission or parole, as relevant in the particular circumstances;</p> <p>(h) number and nature of offences against prison discipline; and</p> <p>(i) such other particulars as may be prescribed by the Cabinet Secretary in Regulations.</p>
	section 74	<p>Section 74 is amended by deleting the word “Minister” in subsection (1) and substituting therefor the words “Cabinet Secretary”</p> <p>Section 74 is further amended by deleting subsections (1)(o) and (p).</p>
Prisons 1963	Rules, rule 71	Rule 71 is amended by deleting subsection (b).
	rule 72	Rule 72 is amended by deleting subsection (c).
	rule 74	Rule 74 is amended by deleting subsection (c).
	rule 79	<p>Rule 79 is amended by deleting the entire section and substituting therefor the following:</p> <p>(1) Forfeiture of eligibility for remission shall be as provided for in Part VI of the Power of Mercy Act, 2021.</p> <p>(2) Any prison officer who has found a prisoner to be guilty of a prison offence in accordance with rules 69, 71 or 71 may, in addition or as an alternative to ordering any of the punishments provided for in those rules, make a</p>

		recommendation regarding the prisoner’s eligibility for remission, to be considered as part of the procedure for remission as set out in Part VI of the Power of Mercy Act, 2021.
	PART VII – PERIOD AND REMISSION OF SENTENCE, INCLUDING RELEASE UNDER SUPERVISION	the title of Part VII is amended by deleting the title and substituting therefor the new title “Remission of Sentence”
	rule 94	<p>Rule 94 is amended by deleting the entire rule and substituting therefor the following:</p> <p>The officer in charge shall be responsible for the due release of all prisoners immediately on their becoming entitled to release, whether from expiration of the period of their sentences, or by parole or commutation or remission of sentence granted under the Power of Mercy Act, 2021.</p>
	rule 95	<p>Rule 95 is amended by deleting subsections (1) and (7) and substituting therefor the following:</p> <p>(1) A prisoner shall be eligible for remission of sentence in accordance with section 46 of the Prisons Act and Part VI of the Power of Mercy Act, 2021.</p> <p>(7) A prisoner transferred to a mental hospital other than in accordance with Part VII of the Power of Mercy Act, 2021 shall earn the same remission as if he were in prison.</p>
	rule 96	<p>Rule 96 is amended by deleting the entire rule and substituting therefor the following:</p> <p>The officer in charge shall ensure that the remission system is explained to all prisoners on admission,</p>

		including the procedure for release and how remission may be forfeited in accordance with Part VI of the Power of Mercy Act, 2021.
	rule 97	<p>Rule 97 is amended by deleting the entire rule and substituting therefor the following:</p> <p>A record shall be kept for each prisoner earning remission showing the sentence, the earliest possible date of release calculated based on two thirds of the sentence, any record of prison discipline to be considered in determining eligibility for remission, and any conditions imposed or recommendations made by the National Parole Board in regard to a grant or denial of remission in accordance with Part VI of the Power of Mercy Act, 2021.</p>
	rule 98	<p>Rule 98 is amended by deleting subsections (1)(a) and (3) and substituting therefor the following:</p> <p>(a) in the case of prisoners sentenced to imprisonment for life, completed two years' imprisonment from the date of admission, and thereafter at intervals of one year from the date of sentence;</p> <p>(3) The officer in charge shall forward every such report to the Commissioner, who shall enter thereon any recommendations for exercise of the power of mercy and forward it to the Power of Mercy Advisory Committee for consideration in accordance with the Power of Mercy Act, 2021.</p>
	rule 99	Repeal.
	rule 100	Repeal.
Kenya Defence Forces Act, 2012	section 178	<p>Section 178 is amended by deleting subsections (3) and (4) substituting therefor the following:</p> <p>(3) If a finding under subsection (1) has been promulgated, the court shall order that the accused be detained in a mental health facility for a period of thirty (30) days, for the purpose of conducting a Behavioural Risk Assessment in accordance with the Power of Mercy Act, 2021, and the court shall issue a warrant in</p>

		<p>accordance with that order, and the warrant shall be sufficient authority for the detention of the accused until the matter may be reviewed by the Mental Health Review Board in accordance with (4).</p> <p>(4) The court shall further refer the matter to the Mental Health Review Board for review and disposition in accordance with the Power of Mercy Act, 2021, and for this purpose shall transmit the court-martial record or a certified copy thereof to the Power of Mercy Advisory Committee, together with any recommendation or observations on the case that the court may think fit to make, for consideration by the Mental Health Review Board.</p>
	section 179	<p>Section 179 is amended by deleting subsections (2) and (3) and substituting therefor the following:</p> <p>(2) When a special finding is so made, the court shall refer the case to the Mental Health Review Board for disposition in accordance with the Power of Mercy Act, 2021, and shall meanwhile order the offender to be committed to a mental health facility for a period of thirty (30) days for the purpose of undergoing a Behavioural Risk Assessment.</p> <p>(3) The court shall forward to the Power of Mercy Advisory Committee a copy of the notes of evidence taken at the trial, together with any recommendation or observations on the case that the court may think fit to make, for consideration by the Mental Health Review Board.</p>
	subsections 179 (4) to (7) inclusive	repeal.
Kenya Defence Forces (Imprisonment) Regulations, 2017	section 7	<p>Section 7 is amended by deleting subsection (1) and substituting therefor the following:</p> <p>(1) The period of remission which may be earned on good conduct by a prisoner shall be one-third of the</p>

		sentence if the sentence exceeds thirty-one days.
	section 9	Subsection 9(d) is amended by deleting the number “33” and substituting therefor the number “32”.
Armed Forces Rules of Procedure, 1969	rule 72	Rule 72 is amended by inserting a new subsection (5): (5) Without limiting (4), if the sentence is one of life imprisonment, the court shall determine the accused’s eligibility for parole in accordance with section 343 of the Criminal Procedure Code (Cap. 75).
	rule 74	Rule 74 is amended by deleting subsection (1) and substituting therefor the following: (1) The sentence or sentences, including any eligibility for parole and any other recommendation to mercy together with the reasons for making it, shall be announced in open court. The sentence or sentences shall be announced as being subject to confirmation.
Mental Health Act	section 3	Section 3 is amended by inserting the following immediately after “Criminal Procedure Code (Cap. 75)”: “Prisons Act (Cap. 90), and the Power of Mercy Act, 2021”
Mutual Legal Assistance Act, 2011	section 16	Section 16 is amended by inserting the following phrase at the end of subsection (5)(a), immediately after the word ‘custody’: “, including any eligibility for release on remission or parole”
Victim Protection Act, 2014	section 20	Section 20 is amended by deleting subsection (1)(c) and substituting therefor the following: (c) Power of Mercy Advisory Committee and the National Parole Board established under the Power of Mercy Act, 2021, on the release of an offender on parole.
National Police Service Act	section 35	Section 35 is amended by inserting the following phrase at the end of subsection (f), immediately after the word ‘records’: “, including retrieving, sealing and expungement of criminal records pursuant to the Power of Mercy Act,

		2021”
High Court (Organization and Administration) (General) Rules, 2016	rule 36	Rule 36 is amended by deleting subsection (2)(f) and substituting therefor the following: (f) provide systems for sealing and expungement of records pursuant to the Power of Mercy Act, 2021, and for disposal and destruction of records pursuant to the Records Disposal Act.
Magistrates' Courts Act, 2015	section 12	Section 12 is amended by inserting the following phrase at the end of subsection (2)(e), immediately after the word ‘direct’: “, and for sealing and expungement of records pursuant to the Power of Mercy Act, 2021”
Court of Appeal (Organization and Administration) Act, 2015	section 22	Section 22 is amended by inserting the following phrase at the end of subsection (1)(h), immediately after the word ‘direct’: “, and for sealing and expungement of records pursuant to the Power of Mercy Act, 2021”

MEMORANDUM OF OBJECTS AND REASONS

The Bill has been submitted by the Cabinet Secretary responsible for correctional services. It seeks to provide for operationalisation of the four powers of mercy in Article 133(1)(a) to (d) of the Constitution, to provide for the appointment, tenure of office of the members and the powers and functions of the Power of Mercy Advisory Committee, the National Parole Board and the Mental Health Review Board, and for connected purposes.

Part I contains definitions of all the concepts relevant to implementation of the Act, and sets out the guiding principles for exercise of the power of mercy.

Part II provides for appointment of members of the Power of Mercy Advisory Committee, the Committee's functions and powers, and the conduct of its affairs. It also provides for appointment of a Secretary to the Committee, responsible for oversight of the Secretariat which is also established in this Part, including provision for functions of the Secretariat. This Part also establishes Power of Mercy Case Management Committees in each correctional facility, and provides for a Power of Mercy Case Manager to be stationed in every prison and mental health facility for coordinate and facilitate the Committee's functions relating to offenders detained in the particular institution. The general process for petitioning for power of mercy is also set out in Part II.

Part III provides for operationalization of the power of pardon in accordance with Article 133(1)(a) of the Constitution, in the form of sealing or expungement of all records pertaining to an offender's criminal conviction. This Part defines the meaning of pardon, including the difference between a 'free' and 'conditional' pardon and the eligibility criteria for each, and sets out the process for petitioning for a pardon. A pardon allows an offender who has completed their sentence and demonstrated that they are a law-abiding citizen for a prescribed number of years, to have all records pertaining to their criminal conviction kept separate and apart from other records, with the effect that a 'nil' Police Clearance Certificate can be obtained from the Directorate of Criminal Investigations, to facilitate the ex-offender's successful reintegration into society.

Part IV provides for operationalization of the power of postponing the carrying out of a punishment in accordance with Article 133(1)(b) of the Constitution, in the form of a new system of parole. The meaning and purpose of parole is clarified, and a National Parole Board is established under the auspices of the Power of Mercy Advisory Committee, to carry out the function of contributing to the maintenance of a just, peaceful and safe society by deciding on the timing and conditions of early release from imprisonment that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding persons. This Part sets out the eligibility to apply for parole of certain categories of offenders, being those who are subject to life imprisonment and those who have been designated as a 'high risk offender', and the process undertaken by the National Parole Board in determining whether an offender should be released and in accordance with what conditions, which in every case include supervision by a parole officer. This Part also provides for participation of victims in the Parole Board process, and for revocation of parole if an offender violates the conditions of parole.

Part V provides for operationalization of the power of substituting a less severe form of punishment in accordance with Article 133(1)(c) of the Constitution, in the form of commutation of a sentence, including from death to life imprisonment, from life imprisonment to a determinate sentence, and from a custodial to a non-custodial sentence. This Part sets out the eligibility, and process of petitioning for, commutation of sentence.

Part VI provides for operationalization of the power of remitting all or part of a sentence in accordance with Article 133(1)(d) of the Constitution, based on the good conduct of an offender during incarceration. The meaning of remission, including the difference between full remission and partial (conditional) remission and the eligibility criteria for each, are provided for, along with the procedure for granting and revoking partial remission.

Part VII establishes the Mental Health Review Board under the auspices of the Power of Mercy Advisory Committee, to carry out the function of addressing mental health in the criminal justice system by protecting the rights of offenders living with mental disability to have their dignity respected, and not to be punished in a cruel, inhuman or degrading manner. Part VII provides for offenders who have been determined by a court to be of unsound mind, guilty but insane, or unable to understand the proceedings against them, to be referred to the Mental Health Review Board for determination of whether, and for how long they may be committed to a mental health facility. The process for making this determination is set out, including the requirement that every offender undergo a Behavioural Risk Assessment to establish the level of risk the offender poses to him/herself and to others. Dispositions of the Mental Health Review Board must be reviewed at a minimum once a year, and are subject to judicial review.

Part VIII provides for the Power of Mercy Advisory Committee to ensure the awareness and capacity building of public and private actors involved in the processes of release from imprisonment and rehabilitation and reintegration of offenders. It mandates the Committee to undertake sensitization of offenders, and education of the public, on the meaning and processes of each power of mercy. This Part also provides for access to information about the power of mercy and the processes undertaken by the Committee and its decision-making entities, including establishment of a database of decisions that is accessible to the public.

Part IX requires the Committee to collect disaggregated data and keep records on offenders who petition for the power of mercy, including on the processes and outcomes of its decision-making entities. This Part also requires the Committee to publish annual reports containing this information, and further provides for budgeting, accounting and auditing of the Committee's expenditures.

Part X sets out the duty of all actors involved in operationalization of the power of mercy to cooperate to promote rehabilitation and reintegration offenders in the interests of public safety. This Part contains provisions on confidentiality and conflict of interest in the processes of the Committee and its decision-making entities, and provides for forms, regulations and consequential amendments to other statutes in order to implement the Act. Finally, this Part repeals the Power of Mercy Act, 2011.

The Schedule to the Bill sets out the consequential amendments to various statutes including the Penal Code, the Criminal Procedure Code and the Prisons Act.

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