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IRIPHABLIKHI YOMZANTSI-AFRIKA

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THE PRESIDENCY

No. 43 19 January 2017

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

Act No. 18 of 2016: Children's Second Amendment Act, 2016

IHHOVISI LIKAMONGAMELI

No. 43 19 January 2017

Ngaloku kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelelwa umphakathi:—

Ino. 18 Ka 2016: uMthetho wesiBili oChibiyela amaLungelo abaNtwana, 2016

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
______	Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 18 January 2017)

ACT

To amend the Children's Act, 2005, so as to extend a definition; to insert new definitions; to provide that the removal of a child to temporary safe care without a court order be placed before the children's court for review before the expiry of the next court day; to provide for the review of a decision to remove a child without a court order; to provide for the provincial head of social development to transfer a child or a person from one form of alternative care to another form of alternative care; to provide that an application for a child to remain in alternative care beyond the age of 18 years, must be submitted before the end of the year in which the relevant child reaches the age of 18 years; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 38 of 2005, as amended by section 3 of Act 41 of 2007

1. Section 1 of the Children's Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion in the definition of ''adoption social worker'' of the word ''or'' at the end of paragraph *(a)*, the insertion in that definition of the word ''or'' at the end of paragraph *(b)* and the addition of the following paragraph:

''*(c)* a social worker in the employ of the Department or a provincial department of social development, including a social worker employed as such on a part-time or contract basis, who has a specialty in adoption services and is registered in terms of the Social Services Professions Act, 1978 (Act No. 110 of 1978);'';

INCAZELO EFINGQIWE EJWAYELEKILE:

[ ]	Amagama akubakaki abayisikwele abagqamile amele okukhishiwe emthethweni osebenzayo.
______	Amagama adwetshelwe ngomugqa ogqamile amele okufakiwe emthethweni osebenzayo.

(English text signed by the President)
(Assented to 18 January 2017)

UMTHETHO

Uchibiyela uMthetho wamaLungelo abaNtwana, wezi-2005, ukuze kwengezwe incazelo; ukufaka izincazelo ezintsha; ukuhlinzekela ngokususwa komntwana endaweni yokunakekela okwesikhashana ngaphandle komyalelo wenkantolo ukuba inkantolo yabantwana ikubuyekeze ngaphambi kokuba kudlule isikhathi esizayo sokuvela enkantolo; ukuhlinzekela ngokubuyekeza isinqumo sokuthatha umntwana ngaphandle komyalelo wenkantolo; ukuhlinzekela ukuba inhloko yesifundazwe kwezokuthuthukiswa kwezomphakathi ukuba idlulise umntwana noma umuntu aye kwenye indawo azonakekelwa kuyona; ukuhlinzekela ngokuba isicelo somntwana sokuba ahlale kule enye indawo anakekelwa kuyona uma esedlule eminyakeni eyi-18, kufanele sithunyelwe kungakapheli unyaka ingane ehlanganisa ngawo iminyaka eyi-18; kanye nokuhlinzekela izindaba ezihambisana nawo.

UZOMISWA iPhalamende laseRiphabhuliki yaseNingizimu Afrika, ngale ndlela elandelayo:—

Ukuchibiyela isigaba 1 somthetho 38 wezi-2005, njengoba uchitshiyelwe isigaba 3 soMthetho 41 wezi-2007

1. Ngakho-ke isigaba 1 soMthetho wamaLungelo abaNtwana, 2005 (kulokhu obizwa ngokuthi uMthethongqangi), uchitshiyelwe—

(a) ngokususa incazelo ‘‘ukuqashwa abezenhlalakahle’’ egameni ‘’noma’’ ekupheleni kwendima *(a)*, ukushutheka incazelo yegama ‘’noma’’ ekupheleni kwendima *(b)* nokwengeza le ndima elandelayo:

‘‘*(c)* usonhlalakahle uqashwe uMnyango noma umnyango wesifundazwe wezokuthuthukiswa kwezomphakathi, kubalwa nosonhlalakahle oqashelwe lo msebenzi ngokungagcwele noma ngenkontileka, umkhakha wakhe yizindaba zabantwana bokutholwa kanti futhi ubhalisile ngokwemibandela ye-*Social Services Professions Act, 1978 (Act No. 110 of 1978)*;’’;

(b) by the insertion after the definition of ''cluster foster care scheme'' of the following definition:

'' **'college'** means college as defined in the Continuing Education and Training Act, 2006 (Act No. 16 of 2006);'';

(c) by the insertion after the definition of ''genital mutilation'' of the following definition:

'' **'grade 12'** means grade 12 as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997);''; and

(d) by the insertion after the definition of ''High Court'' of the following definition:

'' **'higher education'** means higher education as defined in section 1 of the Higher Education Act, 1997 (Act No. 101 of 1997).''.

Amendment of section 151 of Act 38 of 2005

2. Section 151 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

''(2) A presiding officer issuing an order in terms of subsection (1) may also issue an interim order **[that the child be placed in]** for the temporary safe care of the child if it appears that it is necessary for the safety and well-being of the child.''; and

(b) by the insertion after subsection (2) of the following subsection:

''(2A) The court ordering the removal of the child must simultaneously refer the matter to a designated social worker and direct that social worker to ensure that the—

(a) order in terms of subsection (2) is placed before the children's court, for review before the expiry of the next court day following the removal; and

(b) child concerned, and where reasonably possible the parent, guardian or care-giver, as the case may be, are present in the children's court for the purposes of assisting the court in making a decision which is in the best interest of the child.''.

Amendment of section 152 of Act 38 of 2005

3. Section 152 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

''(2) If a designated social worker has removed a child and placed the child in temporary safe care as contemplated in subsection (1), the designated social worker must—'';

(b) by the deletion in subsection (2) of the word ''and'' at the end of paragraph *(a)*;

(c) by the deletion in subsection (2) of the word ''and'' at the end of paragraph *(b)*;

(d) by the substitution for paragraph *(c)* of the following paragraph:

''*(c)* within 24 hours and without delay, report the matter to the relevant provincial department of social development of the removal of the child and of the place where the child has been placed**[.]**; and'';

(e) by the addition to subsection (2) of the following paragraph:

''*(d)* ensure that the—

(i) matter is placed before the children's court for review before the expiry of the next court day after placement of the child in temporary safe care; and

(ii) child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children's court.'';

(f) by the deletion in subsection (3) of the word ''and'' at the end of paragraph *(a)*; and

(b) ngokufaka ngemuva kwencazelo ''umzali oqapha umntwana'' le ncazelo elandelayo:

'' **'ikolishi'** lisho ikolishi njengoba kuchaziwe ku-*Continuing Education and Training Act, 2006 (Act No. 16 of 2006);*'';

(c) ngokufaka ngemuva kwencazelo ''ukucwiya izitho zangasese'' le ncazelo elandelayo:

'' **'Ibanga le-12'** lichaza ibanga le-12 njengoba kuchaziwe esigabeni soku-1 se-*Higher Education Act, 1997 (Act No. 101 of 1997);*''; futhi

(d) ngokushutheka ngemuva kwencazelo ''iNkantolo ePhakeme'' le ncazelo elandelayo:

'' **'iMfundo ePhakeme'** ichaza imfundo ephakeme njengoba kuchaziwe esigabeni soku-1 se-*Higher Education Act 1997 (Act No. 101 of 1997)*.''.

Ukuchibiyela isigaba 151 soMthetho 38 wezi-2005

2. Ngakho-ke isigaba se-151 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:

''(2) Umsebenzi ongamele okhipha umyalelo ngokwemigomo angakhipha futhi umyalelo wesikhashana **[wokuba umntwana abekwe]** yesigatshana soku-(1) wokunakekelwa komntwana okwesikhashana uma kubonakala ukuthi kunesidingo ukuze umntwana avikeleke futhi kuvikelwe nenhlalakahle yakhe.''; futhi

(b) ngokufaka ngemuva kwesigatshana sesi-(2) lesi sigatshana esilandelayo:

''(2A) Inkantolo ekhipha umyalelo wokususwa komntwana kufanele ngaleso sikhathi idlulisele udaba kusonhlalakahle oqondene futhi ikhiphe umyalelo wokuba usonhlalakahle—

(a) akhiphe umyalelo ngokwemigomo yesigatshana sesi-(2) esisezithebeni zenkantolo equla amacala abantwana, ukuba iwubuyekeze ngaphambi kokuba kudlule usuku olulandelayo lokuvela enkantolo ngemuva kokususwa komntwana; futhi

(b) umntwana othintekayo, futhi uma kunesidingo umzali, umuntu oqapha umntwana noma onakekela umntwana noma omunye wabo, abe khona enkantolo equla amacala abantwana ngenjongo yokusiza inkantolo ukuthatha isinqumo esizohambisana nomtwana.''.

Ukuchibiyela isigaba 152 soMthetho 38 wezi-2005

3. Ngakho-ke isigaba se-152 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(2) emagameni andulela indima *(a)* lawa magama alandelayo:

''(2) Uma usonhlalakahle oqokiwe esuse ingane wayibeka endaweni yesikhashana ezonakekela ingane njengoba kuveziwe esigatshaneni soku-(1) , usonhlalakale oqokiwe kufanele—'';

(b) ngokususa esigatshaneni sesi-(2) igama ''kanye'' ekupheleni kwendima *(a)*;

(c) ngokususa esigatshaneni sesi-(2) igama ''kanye'' ekupheleni kwendima *(b)*;

(d) ngokufaka endaweni yendima *(c)* le ndima elandelayo:

''*(c)* engakapheli amahora angama-24 ngaphandle kokubambezeleka, abike udaba emnyangweni oqondene wesifundazwe wezokuthuthukiswa komphakathi mayelana nodaba lokususwa kwengane nokubekwa kwayo lapho ibekwe khona**[.]**; futhi'';

(e) ngokwengeza esigatshaneni sesi-(2) le ndima elandelayo:

''*(d)* aqikelele ukuthi—

(i) lolu daba lusezithebeni zenkantolo equla amacala abantwana ukuba lubuyekezwe ngaphambi kokuba kudlule usuku olulandelayo lokuqulwa kwecala ngemuva kokubekwa komntwana endaweni yesikhashana azonakekelwe kuyona; futhi

(ii) leyo ngane ethintekayo, futhi uma kunesidingo, umzali, umqaphi wengane noma onakekela ingane, noma omunye wabo, abe khona enkantolo equla amacala abantwana.'';

(f) ngokususa esigatshaneni sesi-(3) igama ''kanye'' ekupheleni kwendima *(a)*; futhi

(g) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

''*(b)* refer the matter before the end of the first court day after the day of removal of the child to a designated social worker, **[for investigation contemplated in section 155(2); and]** who must ensure that—

(i) the matter is placed before the children's court for review before the expiry of the next court day after the removal of the child;

(ii) the child concerned, and where reasonably possible, the parent, guardian or care-giver, as the case may be, are present in the children's court, unless this is impracticable; and

(iii) the investigation contemplated in section 155(2) is conducted;''.

Amendment of section 171 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

4. Section 171 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) The provincial head of social development in the relevant province may, subject to subsection (5), **[by order]** transfer in writing **[transfer]** a child in alternative care **[from the child and youth care centre or person in whose care or temporary safe care that child has been placed to any other child and youth care centre or person]** from one form of alternative care to another.'';

(b) by the insertion after subsection (1) of the following subsection:

''(1A) The provincial head of social development in the relevant province may, subject to subsection (5), transfer in writing a person referred to in section 176(2) from one form of alternative care to another form of alternative care.'';

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

''(3) *(a)* If the provincial head of social development transfers a child in terms of subsection (1) **[to the care of the child's parents, guardian or former care-giver]** under the supervision of a designated social worker, the **[order]** written notice of transfer must specify the requirements with which the child and that parent, guardian, **[or]** former care-giver or the current alternative care-giver must comply.

(b) If any requirement referred to in paragraph *(a)* is breached or not complied with, the designated social worker concerned **[may]** must bring the child before a children's court, which may, after an inquiry, vary the **[order]** written notice of transfer issued by the provincial head of social development or make a new order in terms of section 156.'';

(d) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

''Before the provincial head of social development issues **[an order]** a written notice of transfer in terms of subsection (1), he or she must consider a report by a designated social worker, who must **[consult]** have consulted—'';

(e) by the substitution in subsection (4) for paragraphs *(c)* and *(d)* of the following paragraphs, respectively:

''*(c)* the child and youth care centre or person in whose care or temporary safe care or alternative care that child has been placed; and

(d) the child and youth care centre, alternative care or person to whom the child is to be transferred.'';

(g) ngokufaka endaweni yesigatshana sesi-(3) sendima *(b)* le ndima elandelayo:

''*(b)* adlulise lolu daba ngaphambi kosuku lokuqala lokuvela enkantolo ngemuva kosuku lokususwa komntwana ukuba aye kusonhlalakahle oqokiwe **[ukuba aphenywe njengoba kuveziwe esigabeni se-155 (2); futhi]** kufanele aqikelele ukuthi—

(i) lolu daba lusezithebeni zenkantolo equla amacala abantwanaukuba lubuyekezwe ngaphambi kokuphela kosuku lokuvela enkantolo olulandelayo ngemuva kokubekwa komntwana endaweni ephephile ezomnakekela;

(ii) umntwana othintekayo, futhi uma kunesidingo, umzali, umqaphi womntwana noma onakekela umntwana, noma omunye wabo, kufanele abe khona enkantolo, ngaphandle uma lokhu kungeke kukwazi ukuba kwenzeke; futhi

(iii) uphenyo oluvezwe esigabeni se-155(2) lwenziwa;''.

Ukuchibiyela isigaba 171 soMthetho 38 wezi-2005, njengoba kushuthekwe isigaba 10 soMthetho 41 wezi-2007

4. Ngakho-ke isigaba se-171 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

''(1) Inhloko yesifundazwe yezokuthuthukiswa komthethosisekelo esifundazweni esiqondene, ngokulandela isigatshana sesi-(5), **[ngomyalelo]** ingadlulisa ngencwadi ingane ekwenye indawo yokunakekelwa **[esesikhungweni sokunakekelwa kwabantwana nentsha noma umuntu onakekelwayo noma onakekelwa okwesikhashana lapho kubekwe khona ingane esikhungweni sabantwana nentsha noma sabantu]** ukusuka kwenye indawo yokunakekelwa eya kwenye.'';

(b) ngokufaka ngemuva kwesigatshana soku-(1) lesi sigatshana esilandelayo:

''(1A) Inhloko yesifundazwe yezokuthuthukiswa komphakathi esifundazweni esiqondene, ngokwesigatshana sesi-(5), ingadlulisa ngencwadi umuntu odluliswe ngokwesigaba se-176(2) kwenye indawo yokunakekelwa ukuya kwenye indawo yokunakekelwa.'';

(c) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo:

''(3) *(a)* Uma inhloko yesifundazwe kwezokuthuthukiswa komphakathi idlulisa umntwana ngokwemigomo yesigatshana soku-(1) **[ukuba anakekelwe abazali bakhe, umqaphi noma owayenakekela ingane]** ukuba anakekelwe usonhlalakahle oqondene, **[umyalelo]** isaziso esibhaliwe sokudluliswa kufanele siveze izimfanelo leyo ngane nalowo mzali, umqaphi **[noma]** owayenakekela umntwana noma lowo onakekela umntwana ngaleso sikhathi okufanele bazilandele.

(b) Uma izimfanelo ezivezwe endimeni *(a)* ziphuliwe noma zingalandelwanga, usonhlalakahle oqokiwe **[anga]** kufanele afike nomntwana enkantolo equla amacala abantwana, ngemuva kophenyo, engaguqula **[umyalelo]** isaziso esibhaliwe esakhishwa inhloko yesifundazwe kwezokuthuthukiswa komphakathi noma ikhiphe umyalelo omusha ngokwemigomo yesigaba se-156.'';

(d) ngokufaka endaweni yesigatshana sesi-(4) emagameni andulela indima *(a)* lawa magama alandelayo:

''Ngaphambi kokuba inhloko yesifundazwe kwezokuthuthukiswa komphakathi ikhiphe **[umyalelo]** isaziso esibhaliwe sokudluliswa ngokwemigomo yesigatshana soku-(1), kufanele icubungule umbiko kasonhlalakahle oqokiwe, okufanele **[axhumane]** ngabe kuxhunyanwe naye—'';

(e) ngokufaka endaweni yesigatshana sesi-(4) endimeni *(c)* nasendimeni *(d)* lezi zindima ezilandelayo, ngokulandelana:

''*(c)* isikhungo esinakekela abantwana noma intsha noma umuntu onakekelwa noma onakekelwa okwesikhashana noma okwenye indawo yokunakekelwa okubekwe kuyona leyo ngane; futhi

(d) isikhungo esinakekela umntwana nentsha, enye indawo yokunakekela noma umuntu okufanele umntwana adluliselwe kuyena.'';

(f) by the substitution for subsection (5) of the following subsection:

"(5) If the provincial head of social development transfers a child or a person referred to in section 176(2) from a **[secure care child and youth care centre]** more restrictive form of alternative care to a less restrictive **[child and youth care centre or to the care of a person]** form of alternative care, the provincial head of social development must be satisfied that the transfer will not be prejudicial to other children in the less restrictive alternative care.";

(g) by the substitution in subsection (6) for the words preceding paragraph *(a)* of the following words:

"**[No order in terms of]** A transfer contemplated in subsection (1) may not be **[carried out]** given effect to without **[ratification]** approval by a children's court if the child is transferred—"; and

(h) by the substitution in subsection (6) for paragraph *(a)* of the following paragraph:

"*(a)* from the care of a person, including foster care, to a child and youth care centre; or".

Amendment of section 176 of Act 38 of 2005, as inserted by section 10 of Act 41 of 2007

5. Section 176 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"A provincial head of social development may on application by a person placed in alternative care as a child, or by a person acting on his or her behalf, allow that person to remain in **[that]** alternative care until the end of the year in which that person reaches the age of 21 years if—";

(b) by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* the continued stay in that care is necessary to enable that person to complete his or her **[education or training]** grade 12, higher education, college education, internship or learnership."; and

(c) by the addition of the following subsection:

"(3) An application contemplated in subsection (2) must be submitted before the end of the year in which the relevant child reaches the age of 18 years, but a late application may be condoned, upon good cause shown, if such application is submitted within three months after such date.".

Short title and commencement

6. This Act is called the Children's Second Amendment Act, 2016, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

(f) ngokufaka endaweni yesigatshana sesi-(5) lesi sigatshana esilandelayo:

‘‘(5) Uma inhloko yesifundazwe kwezokuthuthukiswa komphakathi idlulisa umntwana noma umuntu ovezwe esigatsheni se-176(2) imususa **[esikhungweni esiphephile sokunakekela ingane nentsha]** endaweni enemithetho kakhulu ukuya kwenye indawo yokunakekela engenayo imithetho eqinile **[isikhungo esinakekela abantwana nentsha noma esinakekela umuntu]** enye indawo yokunakekela, inhloko yesifundazwe yokuthuthukiswa komphakathi kufanele igculiseke ukuthi ukudluliswa ngeke kubandlulule abanye abantwana kule enye indawo yokunakekela enemithetho engaqinile kakhulu.’’;

(g) ngokufaka endaweni yesigatshana sesi-(6) emagameni andulela indima *(a)* lawa magama alandelayo:

‘‘**[Awukho umyalelo mayelana]** Ukudluliswa okuvezwe esigatshaneni soku-(1) ngeke kwenziwe **[kuqhutshwe]** ngaphandle **[kokucubungula]** kokugunyazwa inkantolo equla amacala abantwana uma kudluliswa umntwana—’’; futhi

(h) ngokufaka endaweni yesigatshana sesi-(6) endimeni *(a)* le ndima elandelayo:

‘‘*(a)* lapho enakekelwa khona umuntu, kubalwa umzali umqaphi, isikhungo esinakekela abantwana nentsha; noma’’.

Ukuchibiyela isigaba 176 soMthetho 38 wezi-2005, njengoba kufakwe isigaba 10 soMthetho 41 wezi-2007

5. Ngakho-ke isigaba se-176 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(2) emagameni andulela indima *(a)* lawa magama alandelayo:

‘‘Inhloko yesifundazwe yokuthuthukiswa komphakathi uma umuntu efake isicelo sokubeka umntwana kwenye indawo yokunakekelwa, noma somuntu omele umntwana, ivumele lowo muntu ukuba ahlale **[kuleyo]** kwenye indawo yokunakekela kuze kuphele unyaka lowo muntu azofika ngawo eminyakeni engama-21 uma—’’;

(b) ngokufaka endaweni yesigatshana sesi-(2) endimeni *(b)* le ndima elandelayo:

‘‘*(b)* ukuqhubeka nokuhlala kuleyo ndawo enakekelayo kunesidingo ukusiza lowo muntu ukuba aphothule **[imfundo noma uqeqesho]** ibanga le-12, imfundo ephakeme, imfundo yasekolishi, nokuqeqeshwa noma ukuqeqeshwa kwesikhathi esithile.’’; futhi

(c) ngokwengeza lesi sigatshana esilandelayo—

‘‘(3) Isicelo esivezwe esigatshaneni sesi-(2) kufanele sithunyelwe ngaphambi kokuba kuphele unyaka umntwana azohlanganisa ngawo iminyaka eyi-18, kodwa isicelo esifakwe uma sekudlule isikhathi naso singafakwa, uma kunezizathu ezibalulekile eziveziwe, uma leso sicelo sithunyelwe zingakapheli izinyanga ezintathu ngemuva kwalolo suku.’’.

Isihloko esifingqiwe nokuqala ukusebenza koMthetho

6. Lo Mthetho ubizwa ngokuthi uMthetho wesiBili oChibiyela amaLungelo abaNtwana, 2016, futhi uzoqala ukusebenza ngosuku olunqunywe uMongameli ngesimemezelo kuSomqulu.