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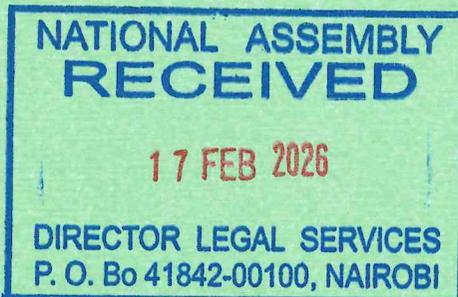
**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2025**

**NAIROBI, 25th November, 2025**

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NATIONAL ASSEMBLY  
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**THE POWER OF MERCY BILL, 2025**

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*Clause*

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**THE POWER OF MERCY BILL, 2025**

**A Bill for**

**AN ACT of Parliament to make further provisions with respect to the Power of Mercy pursuant to Article 133 of the Constitution; to provide for the appointment, tenure, powers and functions of the Power of Mercy Advisory Committee; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I — PRELIMINARY**

1. This Act may be cited as the Power of Mercy Act, 2025.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“acquittal” means a judgment that a person has been found not guilty of the crime 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;

“Advisory Committee” means the Advisory Committee on the Power of Mercy established under Article 133(2) of the Constitution;

“anonymized” has the meaning assigned to it under the Data Protection Act;

“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 for life;

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

Cap. 93.

“Commission” means the Public Service Commission established under Article 233 of the Constitution;

“commutation” means a replacement of a less severe punishment for a judicially imposed sentence;

“conditional pardon” means grant of mercy by releasing a convicted offender subject to specified conditions which may include supervision;

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

“correctional facility” includes a prison;

“court” means a superior court or a subordinate court established under Articles 162(1) and 169(1) of the Constitution, respectively;

“court martial” means a court established pursuant to 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, correctional facility or other place of confinement, by order of a judicial authority or otherwise according to law;

“detain” or “detention” means the lawful deprivation of liberty of a person for a specified period of time, and includes custody in a prison or a mental health facility;

“dependent” means a person who, wholly or substantially, relies on an offender for subsistence;

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

“deserving” means a convicted offender who has undergone rehabilitation and is eligible for reintegration to the community;

“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 a grant of mercy to a convicted offender by releasing such offender to the community without any conditions;

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

“indefinite” means lasting for an unknown or unspecified length of time;

“legal representative capacity” means a person appointed by a court to make decisions on behalf of the offender;

“life imprisonment” means a sentence of imprisonment for an indeterminate period that ends upon the death of the offender;

“mercy” means compassion or forgiveness shown towards an offender by the President;

“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; Cap. 248.

“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;

“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—

(a) stood trial and found guilty of that offence, and sentenced to punishment; or

(b) 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” means grant of mercy that permits 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;

“person with 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;

Cap 411C.

“personal data” has the meaning assigned to it under the Data Protection Act;

“petitioner” means any person who petitions for the power of mercy or their representative;

“power of mercy” means the exercise by the President of any of the forms of reliefs specified under Article 133(1) of the Constitution being either free or conditional pardon, postponing punishment for a specified or indefinite period of time, substituting a less severe punishment, commutation and remission granted pursuant to procedure set out under this Act;

“Pardon Officer” means a person appointed under section 22;

“prison” means a place used to detain persons who are in the lawful custody of the State, or which is designated as a prison pursuant to the law relating to prison facilities, and includes a correctional facility;

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

Cap.64.

“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 specified under Chapter VI of the Penal Code, a Probation Order made pursuant to the Probation of Offenders Act, and a community service order made pursuant to the Community Service Orders Act;

Cap. 63

Cap. 64

Cap. 93.

“recidivism” means the likelihood 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 a convicted offender back into society;

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

“remission” means 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;

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

“victim” has the meaning assigned to it under the Victim Protection Act; Cap. 79A.

“vulnerable offender” means an offender who is –

- (a) female with a child under the age of two years or who is pregnant;
- (b) over the age of sixty years;
- (c) terminally ill; or
- (d) permanently disabled.

3. The objects of this Act is to give effect to Article 133 of the Constitution, and to provide for— Objects of the Act.

- (a) the operationalization of the power of mercy set out under Article 133 of the Constitution;
- (b) the appointment and tenure of members of the Advisory Committee;
- (c) victim participation, transparency and accountability in the implementation and administration of the power of mercy; and
- (d) any other matter necessary to operationalize the provisions of Article 133 of the Constitution.

4. (1) In the implementation of this Act, the provisions of Articles 10 and 232, and Chapter Four and Six of the Constitution on the Bill of Rights and the Leadership and Integrity, respectively shall apply. Guiding principles.

- (2) Without prejudice to the generality of subsection (1), the following guiding principles shall apply—
- (a) uphold the release of deserving offenders as a means of attaining the objectives of rehabilitation of reformed offenders in the society for the attainment of the common good of the society;
  - (b) promote greater community involvement in the administration of criminal justice, specifically in the treatment of offenders;
  - (c) promote amongst offenders a sense of responsibility towards society;
  - (d) promote conducive conditions, including supervision and treatment, and provision of social support, aimed at assisting the offender's successful rehabilitation and reintegration in the society;
  - (e) respect and promote the fundamental human rights and social justice of offenders;
  - (f) ensure expeditious and just determination of petitions for the grant of the power of mercy;
  - (g) 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 in decision-making;
  - (h) promote access to information by the public on the processes and outcomes of decision-making under this Act; and
  - (i) maintain confidentiality of information processed under the Act that may endanger the safety, health or life of any person or involve the unwarranted invasion of the privacy of an individual.

**PART II —COMPOSITION AND  
ADMINISTRATION OF THE POWER OF MERCY  
ADVISORY COMMITTEE**

5. (1) The Advisory Committee shall consist of such persons as specified under Article 133 (2) of the Constitution.

Composition of  
the Advisory  
Committee.

(2) Subject to Article 133(2)(c) of the Constitution, the persons nominated under that provision shall not exceed seven members.

(3) The members of the Advisory Committee specified under Article 133(2)(c) of the Constitution shall be appointed by the President subject to the procedure set out under section 8.

(4) The members of the Advisory Committee appointed under this section shall serve on a part-time basis for a single term of five years.

6. (1) A person is qualified for appointment as a member of the Advisory Committee under Article 133(2)(c) of the Constitution, if the person —

Qualification for appointment as a member of the Advisory Committee.

(a) is a citizen of Kenya;

(b) holds a qualification either as—

(i) an advocate of the High Court of Kenya of not less than fifteen years post qualification experience;

(ii) a medical professional in mental health or psychiatry of not less than fifteen years post qualification experience;

(iii) a professional with fifteen years' post qualification experience in psychology and counselling or correctional service; or

(iv) a professional with at least fifteen years' experience and has served in any of the disciplined services, police, national administration or the defence force.

(2) The qualifications referred to in subsection (1), shall be in addition to the requirements under Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment as a member of the Advisory Committee under Article 133(2)(c), if the person—

(a) is a State officer;

(b) is in the public service;

(c) is a member of a governing body of a political party;

- (d) is an undischarged bankrupt;
- (e) 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;
- (f) is unable to perform the functions of office due to mental incapacity; or
- (g) has been removed from public office for contravening the provisions of the Constitution or any other law.

7. (1) The conduct of business and affairs of the Advisory Committee shall be as set out in the First Schedule.

Meeting of the  
Advisory  
Committee.

(2) Despite subsection (1), the Advisory Committee may regulate its own procedure.

8. (1) The members of the Advisory Committee under Article 133(2)(c) of the Constitution shall be appointed by the President on the recommendation of the Commission.

Procedure for  
appointment.

(2) The Commission shall, within seven days of the occurrence of a vacancy in the membership of the Advisory Committee, advertise the vacancy in at least two newspapers of national circulation inviting applications from persons who qualify for appointment as a member of the Advisory Committee under this Act.

(3) The Commission shall—

- (a) consider the applications received under subsection (2) to determine their qualifications in accordance with the provisions of the Constitution and this Act;
- (b) publish the names of the applicants and the shortlisted applicants in at least two newspapers of national circulation;
- (c) conduct interviews of the shortlisted applicants in a process that is open to the public; and
- (d) recommend to the President persons who are qualified to ensure that the President has choice in appointing members.

9. The chairperson, members and the secretary of the Advisory Committee shall, before assuming office, make and subscribe, before the Chief Registrar, to the oath or affirmation set out in the Second Schedule.

Oath of office.

10. (1) The headquarters of the Advisory Committee shall be in Nairobi but the Advisory Committee shall ensure access to its services in all parts of the Republic to the extent that is practicable to do so.

Headquarters of Advisory Committee.

(2) For the purpose of coordination of national executive functions, the Advisory Committee shall be situated within the Office of the President.

11. (1) In addition to the functions set out in Article 133(1) and (4) of the Constitution, the Advisory Committee shall—

Functions of the Advisory Committee.

- (a) undertake or commission research on matters relating to the exercise of power of mercy;
- (b) collaborate with the state organs responsible for correctional services to –
  - (i) sensitize offenders and persons in correctional services on the power of mercy and procedures relating to petitions for its exercise; or
  - (ii) carry out any necessary investigations required to make a determination on a petition for exercise of the power of mercy;
- (c) partner with state and non-state actors to sensitize the public on the nature and implications of the power of mercy;
- (d) monitor, evaluate and prepare a report to the President and Parliament on a description of the activities of the Advisory Committee, including its financial statements;
- (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.

(2) Except as provided for under this Act, the Advisory Committee shall, in the performance of its

functions, not be subject to the direction or control of any person or authority.

12. (1) The Advisory Committee shall have all powers necessary for the execution of its functions under the Constitution and this Act.

Powers of the  
Advisory  
Committee.

(2) Despite subsection (1), in the performance of its functions, the Advisory Committee shall not be bound by the strict rules of evidence and may—

- (a) subject to this Act, determine its procedures including those of its decision-making entities;
- (b) receive written or oral submissions from —
  - (i) a petitioner;
  - (ii) a victim; or
  - (iii) any other person;
- (c) call for any document from any person or body;
- (d) conduct investigations in the conduct of their business; and
- (e) administer oath to any person.

(3) The Advisory Committee may, by resolution, delegate to any person, officer or employee, the exercise of any of the powers or the performance of any of the duties of the Advisory Committee under this Act.

13. (1) There shall be the Advisory Committee Secretariat which shall be headed by a chief executive officer who shall also be the Secretary to the Advisory Committee.

Establishment of  
the Secretariat.

(2) The Secretary shall be a public officer competitively nominated by the Public Service Commission, and appointed by the President.

(3) The Secretary shall serve for a term of five years' renewable once.

(4) The Secretary shall be —

- (a) the chief executive officer of the Advisory Committee;
- (b) the accounting officer of the Advisory Committee;

- (c) the authorized officer;
- (d) responsible to the Advisory Committee in the operationalization of the power of mercy in accordance with this Act, including —
  - (i) implementing the policy direction and decisions of the Advisory Committee;
  - (ii) the day-to-day administration and management of the affairs of the Advisory Committee, including supervision of the Secretariat;
  - (iii) preparing and submitting financial and quarterly reports to the Advisory Committee; and
  - (iv) performing such other duties as may be assigned by the Advisory Committee.

14. A person shall be qualified for appointment as the Secretary if the person—

Qualifications of the Secretary.

- (a) is a citizen of Kenya;
- (b) holds at least a degree from a university recognised in Kenya, in any of the following fields —
  - (i) law;
  - (ii) correction science;
  - (iii) human rights;
  - (iv) economics;
  - (v) social sciences; or
  - (vi) public administration;
- (c) has at least fifteen years' relevant professional experience;
- (d) has demonstrable competence in administration of not less than ten years; and
- (e) satisfies the requirements of Chapter Six of the Constitution.

15. (1) The Secretary may be removed from office in accordance with the terms and condition of service, for —

Removal of Secretary.

- (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.

(2) Where a decision is taken to remove the Secretary from office in accordance with subsection (1), the Public Service Commission shall—

- (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.

16. (1) The Advisory Committee shall, in consultation with the Commission, competitively recruit officers and staff as are necessary for the proper discharge of the functions of the Secretariat as provided under this Act.

Staff of the Secretariat.

(2) Public officers may, upon request by the Secretary, be seconded from any national government departments or agencies.

17. (1) Members of the Advisory Committee and Secretariat shall not discuss the decisions of the Advisory Committee, or disclose the information that those decisions are based upon, with any person other than other members of the Advisory Committee, Secretariat staff, unless legally required to disclose the information in accordance with the Access to Information Act, or by order of a court.

Confidentiality.

Cap. 7M.

(2) A member of the Advisory Committee, and the Secretariat shall sign a confidentiality agreement.

18. (1) A member of the Advisory Committee who has a direct or indirect personal interest in a matter being considered or to be considered by the Advisory Committee shall, as soon as reasonably practicable after the relevant

Conflict of interest.

facts concerning the matter have come to their knowledge, disclose the nature of their interest to the Advisory Committee.

(2) A disclosure of any such interest in a matter shall be recorded in the minutes of the meeting of the Advisory Committee and such 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.

(3) A member or staff of the Advisory Committee, including their family members, shall not transact any business or trade with the Advisory Committee.

(4) A person who contravenes this section 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.

19. Members of the Advisory Committee and the Chief Executive Officer shall be paid such allowances or remuneration as the Salaries and Remuneration Commission may advise.

Allowances or remuneration.

20. The Chief Executive Officer may, in consultation with the Advisory Committee, hire experts or consultants whose knowledge and skills are considered necessary for the effective discharge of the functions of the Advisory Committee.

Experts or consultants.

21. (1) There is constituted in each correctional facility in Kenya, an *ad hoc* Committee to be known as the Power of Mercy Case Management Committee comprising of at least five but not more than seven members, as may be prescribed.

Constitution of Power of Mercy Case Management Committees.

(2) The Power of Mercy Case Management Committee shall be responsible for—

(a) providing a forum for collaboration of all relevant officers stationed at the prison in the implementation of the provisions of this Act;

Cap. 79A.

(b) collecting and collating information and preparing reports for the Advisory Committee, which reports may include prison reports; and

- (c) in consultation with the Victim Protection Board established under section 19 of the Victim Protection Act, identifying victims and community members, facilitate the participation of victims during hearings and sensitizing them on the relevant process and potential outcomes in relation to a petitioner.

22. (1) For the purpose of this Act, the Advisory Committee, may by notice in the *Gazette*, appoint Pardon Officers, who shall be public officers.

Pardon Officers.

(2) The Pardon Officers shall through the Commissioner-General of Prisons, report to the Advisory Committee, on all matters related to the power of mercy.

23. A member of the Advisory Committee, or person working under the direction of the Advisory Committee or Chief Executive Officer shall not 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.

Protection from personal liability.

24. The funds of Advisory Committee shall comprise—

Funds of the Advisory Committee.

- (a) such moneys as may be appropriated by Parliament for purposes of the Advisory Committee;
- (b) such moneys, revenue or assets as may accrue to or vest in the Advisory Committee in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law;
- (c) such gifts, grants, loans or donations, made with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance, to the Advisory Committee; and
- (d) money from any other source received by Advisory Committee in the performance of its functions under this Act.

### PART III— PETITIONING FOR POWER OF MERCY

25. Pursuant to Article 133(1) of the Constitution, the President may, on the advice of the Advisory Committee, grant any person upon petitioning and subject to the eligibility criteria set out under this Act any of the following forms of mercy—

Forms of mercy under Article 133 of the Constitution.

- (a) free or conditional pardon;
- (b) postponement of the carrying out of a punishment, either for a specified or indefinite period;
- (c) substituting a less severe form of punishment; or
- (d) remitting all or part of a punishment.

26. (1) Subject to subsection (2), any person may petition the President through the Advisory Committee for grant of power of mercy specified under Article 133(1) of the Constitution, if they satisfy any of the eligibility criteria specified under this Act.

Process of petitioning for Power of Mercy.

(2) Despite subsection (1), an offender who—

- (a) is on probation;
- (b) is serving a suspended sentence; or
- (c) has a pending application for judicial remedy before a court,

shall not be eligible to petition for the exercise of the power of mercy.

(3) In making the petition, a person may, in the prescribed form, petition the President through the Advisory Committee for the exercise of power of mercy.

(4) A petition filed under this Act as specified under subsection (3) shall be accompanied by supporting documents as shall be prescribed.

(5) The Advisory Committee shall, in making their recommendations to the President pursuant to Article 133(1) of the Constitution, consider the reports submitted by the Pardon Officer, through the Secretariat, which shall include all the reports transmitted through the Case Management Committees.

27. (1) Free pardon may, and on a petition being made pursuant to section 26 of this Act, be granted in exceptional circumstances, — Free pardon.

- (a) to vulnerable convicted offenders;
- (b) to deserving convicted offenders below the age of eighteen except those convicted of a capital offence; or
- (c) in the national interest which may include for purposes of fostering diplomatic relations.

(2) Upon being granted free pardon, the pardoned individual shall, on application, be granted a Police Clearance Certificate in the manner specified under section 35.

28. (1) The President may, pursuant to Article 133(1)(b) of the Constitution, on the advice of the Advisory Committee, grant a conditional pardon, where, — Conditional pardon.

- (a) in case of a misdemeanour, where the convicted offender has served at least one third of the custodial sentence; or
- (b) in case of a felony, where the convicted offender has served at least fifteen years of the custodial sentence in case of an offender serving an indeterminate sentence or one third in case of an offender serving determinate sentence,

provided that there is proof of the convicted offender being deserving.

(2) For purposes of subsection (1)—

- (a) “indeterminate” means an offender serving a sentence whose period cannot be determine; and
- (b) “determinate” means an offender serving a sentence whose period can be determined;

(3) A person who has been granted a conditional pardon may apply to the President through the Advisory Committee for the sealing of criminal records —

- (a) one year after grant of conditional pardon, in case of a misdemeanour; or
- (b) three years after grant of conditional pardon, in case of a felony;

and the application shall be granted if—

- (i) the pardonee provides proof of a record free of any criminal conviction during the period; and
- (ii) the Directorate of Criminal Investigations is satisfied that sealing of the criminal records shall not bring the administration of justice into disrepute in any the circumstances.

(4) In considering the application referred to under subsection (3), the Advisory Committee shall consult the Directorate of Criminal Investigations and all other relevant bodies including Kenya Prison Service, the Office of the Director of Public Prosecutions and the courts.

(5) Despite subsection (3), the following offenders who have served a determinate sentence including—

- (a) habitual offenders who have committed two or more felonies;
- (b) sexual offenders; and
- (c) violent offenders who caused serious bodily harm to the victim where the offence was found to be motivated by discrimination including gender-based violence, female genital mutilation, domestic violence, ethnic-based violence or violence against persons with disabilities,

shall be eligible to apply for a record suspension, five years after grant of conditional pardon and upon—

- (i) providing proof of a record free of any criminal conviction during ten-year period on the grant of conditional pardon obtained from the Directorate of Criminal Investigations; and
- (ii) the Director of Criminal Investigations being satisfied that a record suspension shall not bring the administration of justice into disrepute in all the circumstances.

(6) For the avoidance of doubt, conditional pardon shall not—

- (a) be construed as an acquittal of the offence for which the pardon is granted; or

- (b) 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.

(7) Sealing of criminal record on grant of conditional pardon shall be conditional on the pardoned maintaining a clean criminal record and shall be automatically revoked if the offender is subsequently convicted of an offence, in which case the record shall be activated on all the relevant database.

29. (1) The President may pursuant to Article 133(1)(b) of the Constitution, on the advice of the Advisory Committee, and on a petition being made pursuant to section 26 postpone the carrying out of a punishment, either for a specified or indefinite period, on—

Postponing of a punishment.

- (a) medical grounds under extenuating circumstances where the offender—
  - (i) suffers from an incurable terminal illness or a highly contagious disease;
  - (ii) is entirely incapacitated requiring assistance with the activities of daily living;
  - (iii) is critically ill; or
  - (iv) is pregnant, a lactating mother or the sole caretaker of dependent children; or
- (b) grounds of national interest; or
- (c) such other circumstances as may be deemed fit or just.

(2) Upon the grant of mercy in the form of postponement, the offender shall—

- (a) be placed under the supervision of a probation officer; and
  - (b) comply with all the conditions of release including any special conditions that may be imposed.
- (3) For the avoidance of doubt, grant of postponement under this section shall not—
- (a) be construed as an acquittal of the offence for which the postponement is granted; or

- (b) operate as a bar or mitigating factor to lawful prosecution of, or conviction for an offence other than that for which the postponement was granted.

30.(1) The President may, pursuant to Article 133(1)(c) of the Constitution, on the advice of the Advisory Committee, and on a petition being made pursuant to section 26 substitute a less severe form of punishment on—

Substituting a less severe form of punishment.

- (a) medical grounds, in circumstances, where the offender—
  - (i) suffers from an incurable terminal illness or a highly contagious disease;
  - (ii) is entirely incapacitated requiring assistance with the activities of daily living;
  - (iii) is of advanced age;
  - (iv) is critically ill; or
  - (v) is pregnant, a lactating mother or the sole caretaker of dependent children; or

- (b) recommendation of the Commissioner of Prisons, for purposes of decongesting of prisons or commuting capital sentences to life imprisonment; or

- (c) such other circumstances as may deem fit or just.

(2) Substitution of a less severe form of punishment may constitute any of the following—

- (a) replacement of a custodial sentence with a non-custodial sentence;
- (b) reduction of the duration of the non-custodial sentence; or
- (c) relief of part of the legal consequences of a conviction.

(3) The grant of substitution of a less severe form of punishment shall be irrevocable and any additional information provided in support of the petition, shall demonstrate that the benefit to the convicted offender of a substitution outweighs any potential risk to society or to any person.

31.(1) The President may, pursuant to Article 133(1)(d) of the Constitution, on the advice of the Advisory Committee, and on a petition being made pursuant to section 26, remit part or all of a sentence of a convicted offender where—

Remission of all or part of a sentence.

- (a) the offender is serving a determinate custodial sentence except for designated high risk offenders;
- (b) the offender has served two thirds of a determinate custodial sentence; or
- (c) the offender, having a record of minor disciplinary offences, or a single aggravated disciplinary offence, has served two thirds of the sentence or at any time thereafter.

(2) For the avoidance of doubt –

- (a) “remitting all of a punishment” means automatic release without conditions or supervision in the community and is irrevocable; and
- (b) “remitting part of a punishment” includes release subject to supervision by a probation officer,

based on satisfying the eligibility criteria specified under this Act.

(3) Partial remission shall apply for offenders with a single record of minor disciplinary offences, by imposing supervision by a probation officer for a specified period of time, which shall not be longer than six months in any case.

(4) A convicted offender who has a record of repeat minor disciplinary offences or aggravated disciplinary offences and who does not show any potential for or commitment to reform, and the offender commits any of the following offences—

- (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, shall not eligible for remission.

32. (1) For the purpose of section 31 and 33, a “minor disciplinary offence” includes –

Minor and aggravated disciplinary offences.

- (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) committing any assault that does not result in serious bodily harm to the victim;
- (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 offending against good order and discipline;
- (o) attempting to do any of the foregoing; or
- (p) aiding or abetting another person in doing any of the foregoing.

(2) For the purpose of this section, an “aggravated disciplinary offence” means –

- (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, provided that the harm is not permanent disfigurement; or
- (c) committing any act of gross misconduct or insubordination within the meaning of the *Prisons Rules, 1963*.

33. Partial remission shall apply for offenders with a single or record of minor disciplinary offences, by imposing supervision by a probation officer for a specified period of time, which shall not be longer than six months in any case.

Partial remission.

34. (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.

Revocation of partial remission.

(2) A Probation Officer may recommend that remission be revoked by the Advisory Committee in any of the circumstances set out under subsection (1) by providing details of the offender’s conduct to the Advisory Committee.

(3) A recommendation for revocation of partial remission shall be in writing and shall include detailed grounds for revocation.

(4) Upon receipt of a recommendation in subsection (3), the Advisory Committee shall review and determine the matter within fourteen days.

(5) In determining whether remission should be revoked in the circumstances, the Advisory Committee member may—

- (a) invite submissions from any person who may have relevant information; or
- (b) hold an informal hearing,

but shall in every case inform the offender of the recommendation and give the offender an opportunity to make representations orally or in writing.

(6) The Advisory Committee member shall determine whether the offender poses an undue risk to society or to any person.

(7) Where the Advisory Committee member determines that there is undue risk that cannot be mitigated, remission shall be revoked.

(8) Where the Advisory Committee 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 extend beyond the remainder of the remitted sentence.

(9) The Advisory Committee member shall give reasons in writing for the decision, and shall provide a copy to the Probation Officer and the offender.

(10) A decision to revoke partial remission shall be subject to judicial review by a court.

(11) An offender whose partial 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.

**35.** (1) A pardoned offender shall on application to the Advisory Committee, obtain a Police Clearance Certificate and the criminal records pertaining to the crime to which they have been pardoned shall be sealed by the respective entity which has custody of such records.

Police clearance certificate.

Cap.411C.

(2) For the avoidance of doubt the entity required to seal criminal records as specified under subsection (1) may anonymize or pseudonymise the criminal records in accordance with the Data Protection Act.

(3) For purposes of this section, custodians of criminal records pertaining to the offender's criminal conviction may include—

- (a) the National Police Service entity holding all police records of complaint, charge, investigation, detention, arrest and conviction;

- (b) the Kenya Prison Service entity holding all prison records of the offender's in remand or serving a custodial sentence;
- (c) the Office of the Director of Public Prosecutions holding all records for the prosecution; and
- (d) the courts holding all judicial records of the trial proceedings.

**36.** Where a pardoned individual recidivist, the Director of Criminal Investigations shall activate the criminal records previously held under seal and shall advise all the relevant agencies to reactivate their records and any valid Police Clearance Certificate shall be revoked.

Activation of sealed criminal records.

#### **PART IV— FINANCIAL PROVISION**

**37.** (1) In this Part—

Financial Year.

“Institution” means the Advisory Committee as constituted under Article 133(2) of the Constitution.

(2) The financial year of the Institution shall be the period of twelve months ending on the thirtieth of June each year.

**38.** (1) At least five months before the commencement of each financial year, the Institution shall cause to be prepared estimates of the revenue and expenditure of the Institution for that year.

Annual estimates.

(2) The annual estimates shall make provision for all estimated expenditure of the Institution for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the allowances and other charges in respect of members of the Institution;
- (b) the payment of salaries, allowances, pensions, gratuities and other charges in respect of the staff of the Institution;
- (c) the proper maintenance of the buildings and grounds of the Institution; and
- (d) the maintenance, repair and replacement of the equipment, machinery and other property of the Institution.

(3) The annual estimates shall be approved by the Cabinet Secretary before the commencement of the financial year to which they relate.

39. (1) The Chief Executive Officer of the Institution shall cause to be kept all proper books and records of accounts of the income, expenditure and assets and liabilities of the Institution.

Accounts and audit.

(2) Within a period of three months after the end of each financial year, the Institution shall submit to the Auditor-General the accounts of the Institution together with—

Cap. 412B.

- (a) a statement of the income and expenditure of the Institution during that year; and
- (b) a statement of financial position of the Institution on the last day of that year.

(3) The accounts of the Institution shall be audited and reported upon in accordance with the Public Audit Act.

#### **PART V— AWARENESS, CAPACITY BUILDING, PUBLIC EDUCATION AND ACCESS TO INFORMATION**

40. (1) The Advisory 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.

Awareness and capacity building of public and private actors.

(2) Without limiting subsection (1), the Advisory Committee may work with any public or private sector entity involved in the criminal justice sector to promote the inclusion in training or education curricula of awareness and capacity building on the power of mercy, including —

- (a) eligibility of offenders for pardon, postponement, commutation and remission;
- (b) the process for granting each power of mercy;
- (c) the rights of victims under this Act; and

- (d) the importance of community support for the rehabilitation and reintegration of offenders towards the promotion and maintenance of a just and peaceful society.

41. 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 Advisory Committee to assist in doing so.

Sensitization of offenders.

42. (1) The Advisory Committee shall conduct public education on the power of mercy and procedures relating to petitions for its exercise.

Public education.

(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.

43. (1) The Advisory 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.

Advisory services.

(2) Any government department or agency, or private entity may seek advice from the Advisory Committee on any matter relating to implementation of this Act.

44. (1) Subject to Article 35 of the Constitution and the law relating to access to information, the Advisory Committee shall proactively publish and publicize any information within its mandate including –

Access to information held by the Advisory Committee.

- (a) information about the Advisory Committee the data collected in accordance with section 46; and
- (b) information on the rehabilitation and reintegration supports provided to released offenders by all State, non-governmental and private entities, including data on the number of offenders served by each entity or facility.

(2) A request by any person for information regarding the power of mercy —

(a) shall be addressed to the Secretary or any other person the Secretary may designate for that purpose; and

Cap.7M.

(b) may be subject to the payment of a reasonable fee in instances where the Advisory Committee incurs an expense in providing the information.

(3) To the greatest extent possible without altering the original version, records shall be disclosed in a user-friendly and plain language format that is understandable to a lay person, including by providing a descriptive explanation of technical information.

(4) Subject to Article 35 of the Constitution and the law relating to access to information, the Advisory Committee may decline to give information to a person where —

(a) giving the information may endanger the safety or life of any person;

(b) the information requested is at a deliberative stage; or

(c) the person unreasonably fails to pay the prescribed fee.

(5) The right of access to information under Article 35 of the Constitution and the Access to Information Act is limited only to the nature and extent specified under subsection (4).

45. (1) The Advisory Committee shall create and maintain an electronic database of their decisions, and make the database publicly accessible either through their respective websites, the National Council for Law Reporting database or website, or any other reasonable means by which the database may be accessed and searched.

Decisions database.

(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.

#### **PART VI— MISCELLANEOUS PROVISIONS**

**46.** (1) The Advisory Committee shall collect and publish data on their respective websites and in other manner as they may approve on their processes and outcomes, including—

Data collection.

- (a) the number of petitions received;
- (b) the number of hearings held;
- (c) the number of decisions;
- (d) the details of the successful and unsuccessful offender who petitioned; and
- (e) offenders conduct subject to supervision.

(2) The data specified under subsection (1) shall be 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.

**47.** (1) The Advisory Committee established shall create and securely maintain an individual file for each petitioner or applicant, as the case may be, with sub files as necessary for separate petitions or applications and for any review in the manner and form that shall be prescribed.

Record keeping.

(2) Except for final decisions which shall be made available to the public as provided for in section 45, all other records contained in a petitioner's or applicant's file including sensitive personal data concerning convicted offenders, victims, their families and other community members, may be kept confidentially and exempted from disclosure in accordance with section 6 of the Access to Information Act.

Cap.7M.

Cap.7M.

(3) Any concerns 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.

48. It shall be 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 institutions established under this Act in order to promote the implementation of this Act.

Duty to cooperate to promote rehabilitation, reintegration and public safety.

49. Proceedings against the Advisory Committee shall be deemed to be proceedings against the government and shall be subject to the Government Proceedings Act.

Legal proceedings.  
Cap. 40.

50. A person who contravenes the provisions of this Act commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or imprisonment for a term not exceeding five years, or to both.

General penalty.

51. (1) The Advisory Committee shall, in consultation with the Cabinet Secretary, prescribe forms to be used for the purposes of filing petitions and issuing notices, decisions and summons issued by the Advisory Committee.

Forms.

(2) Despite subsection (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.

## PART VII – PROVISIONS ON DELEGATED POWERS

52. (1) The Cabinet Secretary, may make Regulations generally for the proper carrying out of the purposes and provisions of this Act and in particular, may make Regulations specifying —

Regulations.

- (a) the manner in which petitions under this Act shall be made;
- (b) the measures to be taken by public entities and the Judiciary to facilitate the exercise by persons of their rights under this Act;
- (c) such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration; and
- (d) prescribing anything which may be or is required to be prescribed under this Act.

Cap. 2A.  
Cap. 2.

(2) For the purposes of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary 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—
  - (i) the Statutory Instruments Act;
  - (ii) the Interpretation and General Provisions Act.
  - (iii) the general rules of international law as specified under Article 2(5) of the Constitution; and
  - (iv) any treaty and convention ratified by Kenya under Article 2(6) of the Constitution.

**PART VIII—REPEAL, SAVINGS, TRANSITION  
PROVISIONS AND CONSEQUENTIAL  
AMENDMENTS**

**53.** The Power of Mercy Act is hereby repealed.

Repeal of Cap. 94.

**54.** The laws specified in the first column of the Third Schedule are amended in the provisions specified in second column therefor, in the manner specified in the third column.

Consequential amendments.

**55.** For purposes of this Part —

“former institution” means the Power of Mercy Advisory Committee Secretariat; and

Transitional provisions.

“appointed day” means the day on which this Act comes into force.

**56.** Any statutory instrument in force made under this Act immediately before the appointed day, shall remain in force as if it were made under this Act and shall be applied with necessary modifications.

Statutory instruments.

57. Any rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on the former institution shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Advisory Committee.

Rights, obligations and contracts.

58. (1) A person who, immediately before the commencement date was an officer or member of staff of the former institution, not being then under notice of dismissal or resignation shall, on the commencement of this Act, become an officer or staff of the Advisory Committee on such terms and conditions of service as the Advisory Committee may determine.

Staff of former institution.

(2) Despite subsection (1), a member of staff or officer who was serving in the former institution as a substantive member of staff or officer, seconded member of staff or officer, deployed member of staff or officer, shall upon the commencement of this Act be given an option to elect to serve in the Advisory Committee or be redeployed in the Public Service or the relevant parent Ministry Department or Agency within a period of three years.

59. The members of the Advisory Committee and the chief executive officer shall continue to serve the remainder of their term upon the commencement of this Act.

Tenure of Chief Executive Officer and member of the Advisory Committee. Assets and liabilities.

60. (1) On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before that date were vested in the former institution shall vest in the Advisory Committee.

(2) On the appointed day, all rights, powers and liabilities, which immediately before that date were vested in, imposed on or enforceable against the former institution shall be vested in, imposed on or enforceable against the Advisory Committee.

61. Any petitions or other matters pending consideration by the former institution shall after the appointed day, be continued as if the proceedings were instituted under the provisions of this Act.

Committee hearings.

62. Any reference in any written law or in any document or instrument to the former institution shall, on and after the appointed day, be construed to be a reference to the Advisory Committee.

Reference to the former institution.

63. Any proceedings pending before the former institution, a tribunal or a court of competent jurisdiction immediately before the appointed day to which the former institution was a party shall be continued as if the proceedings were instituted under the provisions of this Act.

Preservation of pending proceedings.

64. Every agreement, deed, bond or other instrument to which the former institution was a party or which concerned the former institution and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Advisory Committee were a party thereto or affected thereby instead of the former institution and as if for every reference, whether express or implied, therein to the former institution there were substituted in respect of anything to be done on or after the appointed day.

Agreements, deeds, bonds or other instruments.

65. The administrative decisions made by the former institution which are in force immediately before the appointed day shall, on or after such day, have force as if they were decisions made by the Advisory Committee under this Act.

Administrative decisions.

66. The Secretary of the former institution shall continue to serve the remainder of their term upon the commencement of this Act.

Savings.

67. (1) Where on the appointed day—

Disciplinary proceedings.

- (a) any disciplinary proceedings against any member of staff of the former institution are in the course of being heard or instituted, or have been heard or investigated by the former institution but no order or decision has been made thereon;
- (b) any such member of staff is interdicted or suspended, the Advisory Committee shall—
  - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
  - (ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence

committed by him, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) Where on the appointed day, any penalty, other than dismissal, has been imposed on any member of staff of the former institution pursuant to disciplinary proceedings and the penalty has not been, or remains to be, served by such member of staff, the member of staff shall upon transfer to the Advisory Committee, serve or continue to serve such penalty to its full as if it had been imposed by the Advisory Committee, where applicable.

(3) Despite the generality of subsection (1), the provisions on discipline in the human resource instruments of the former institution shall apply until conclusion of the disciplinary process.

**68.** (1) A member of staff of the former institution who becomes a member of staff of the Advisory Committee shall continue to be governed by the existing Government pension arrangements or any other statutory voluntary pension scheme.

Pension.

(2) Where any person whose services are transferred to the Advisory Committee is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Advisory Committee shall be deemed to be service in the former institution.

(3) The Advisory Committee may, by order, make provisions with respect to pension or provident fund benefits of the members of staff of the Committee and with respect to the pension scheme and provident fund of the former institutions.

(4) This section shall apply to the staff of the former institution with necessary modifications.

## FISRT SCHEDULE

(s.7)

**CONDUCT OF BUSINESS AND AFFAIRS OF THE ADVISORY  
COMMITTEE**

|  |   |
|--|---|
| <p>1. (1) The Advisory Committee shall decide the time and venue for meetings and the meetings shall be convened by the chairperson.</p> <p>(2) The Advisory Committee shall hold at least four meetings in every financial year and not more than four months shall elapse between one meeting and the next meeting.</p> <p>(3) Unless three quarters of the members otherwise agree, at least seven days' notice in writing of a meeting shall be given to every member of the Advisory Committee.</p> <p>(4) A meeting shall be presided over by the chairperson or in the absence of the chairperson, by the vice-chairperson of the Advisory Committee.</p> <p>(5) The members of the Advisory Committee shall elect a vice-chairperson from among the members—</p> <p>(a) at the first sitting of the Advisory Committee; and</p> <p>(b) whenever it is necessary to fill the vacancy in the office of the vice- chairperson.</p> <p>(6) The chairperson shall, on the written application of one-third of members, convene a special meeting of the Advisory Committee.</p> <p>(7) The Advisory Committee may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Advisory Committee.</p> | Meetings.                                     |
| <p>2. (1) Within seven days of appointment of members of the Advisory Committee in accordance with section 9(3), the Chairperson shall convene the first meeting of the Advisory Committee at which the members shall elect the vice chairperson of the Advisory Committee from amongst their number.</p>  | Election of chairperson and vice-chairperson. |
| <p>(2) The chairperson and vice chairperson shall not be of the same gender.</p>   |   |

|   |                                  |
|---|----------------------------------|
| <p>3. The quorum of a meeting of the Advisory Committee shall be five members.</p>  | <p>Quorum.</p>                   |
| <p>4. A decision of the Advisory 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 casting vote.</p>   | <p>Voting.</p>                   |
| <p>5.(1) The Advisory Committee may from time to time establish sub-committees for the better carrying out of its functions.</p>  | <p>Subcommittees.</p>            |
| <p>(2) The Advisory Committee may co-opt into the membership of a sub-committee established under paragraph (1), any person whose knowledge and skills are considered necessary and relevant to the purpose for which the sub-committee is constituted.</p> |                                  |
| <p>(3) 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.</p>  |                                  |
| <p>6. A vacancy in the Advisory Committee shall not affect the proceedings and decisions of the Advisory Committee.</p>   | <p>Vacancy in the Committee.</p> |
| <p>7. Except as provided for in this Schedule, the Advisory Committee may regulate its own procedure.</p>   | <p>Procedure of Committee.</p>   |

**SECOND SCHEDULE**

**(s.9)**

**OATH/AFFIRMATION OF OFFICE OF THE CHAIRPERSON/  
SECRETARY/MEMBER OF THE ADVISORY COMMITTEE**

I..... having been appointed (the chairperson/ secretary/ member) of the Advisory Committee under the Power of Mercy Act, do swear/ solemnly affirm that I will at all times obey, respect and uphold the Constitution of Kenya and all other laws of the Republic; that I will faithfully and fully, impartially and to the best of my knowledge and ability, discharge trust, perform the functions and exercise the powers devolving upon me by virtue of this appointment without fear, favor, bias, affection, ill-will or prejudice. (SO HELP ME GOD).

Sworn/Declared by the said.....  
Before me this..... day of.....  
.....Chief Registrar

## THIRD SCHEDULE

(s.54)

## CONSEQUENTIAL AMENDMENTS

| Written Law                        | Provision  | Amendment  |
|------------------------------------|------------|--|
| Criminal Procedure Code (Cap. 75). | s. 162     | <p>Insert the following new subsection immediately after subsection (1)—</p> <p>(1A) The prosecutor and the investigating officer, undertaking the prosecution and investigation of the case against the accused or any other prosecutor attached to the same court shall provide the Kenya Board of Mental Health established under section 4 of the Mental Health Act and any other person handling the case in terms of subsection (1), who is conducting the inquiry on the accused's mental capacity shall make a report in writing—</p> <ul style="list-style-type: none"> <li>(a) the nature of the charge against the accused;</li> <li>(b) the stage of the proceedings at which the referral took place;</li> <li>(c) the purport of any statement made by the accused before or during the court proceedings or investigations that is relevant with regard to his or her mental condition or mental capacity;</li> <li>(d) the purport of evidence that has been given that is relevant to the accused's mental condition or mental capacity; in so far as it is within the knowledge of the prosecutor.</li> <li>(e) the accused's social background and family composition and the names and addresses of his near relatives; and</li> <li>(f) any other fact that may in the opinion of the prosecutor be relevant in the evaluation of the accused's mental condition or mental capacity.</li> </ul> |
|                                    | s. 162 (4) | Delete and substitute therefor the following new subsection—   |

|  |           |   |
|--|-----------|---|
|  |           | (4) if the case is one in which bail may not be taken in accordance with subsection (3), the court shall order that the accused be detained in a mental health facility in accordance with the advice of the Mental Health Offenders Review Committee but not for a period exceeding ninety days.   |
|  | s. 162(5) | Delete.   |
|  | s. 163(1) | Delete and substituting therefor the following new subsection—<br><br>(1) If a person referred to the Mental Health Offenders Review Committee under section 162 or section 280 is subsequently found to be capable of making his or her defence, the Mental Health Offenders Review Committee shall refer the person back to the court for proceeding in accordance with this section.   |
|  | s. 163(3) | Delete and substitute therefore the following new subsection—<br><br>(3) In the former case, the court shall thereupon cause the person to be brought in custody before it, and shall deal with him or her 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 or her and thereupon he or she 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. |
|  | s. 164    | Delete and substitute therefor the following new section—<br><br><b>164.</b> 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 Offenders Review Board under section 162 or section 280 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.   |
|  | s.166<br>(Head note) | Delete and substitute therefor the following new head note—<br>Defence of mental incapacitation adduced at trial  |
|  | s. 166 (1)           | Delete and substitute therefor the following new subsection—<br><br>(1) If the court finds that the accused committed the act in question and that he or she at the time of such commission was by reason of mental incapacitation not criminally responsible for such act—<br><br>(a) the court shall find the accused not guilty by reason of mental incapacitation; or<br><br>(b) the court shall set aside the conviction, and find the accused not guilty by reason of incapacitation, if the court makes the finding, after the accused has been convicted of the offence, but before sentence is passed. |
|  | s.166 (2)            | Delete.   |
|  | s. 166(3)            | Delete  |
|  | s. 166(4)            | Delete.   |
|  | s. 166(5)            | Delete.   |
|  | s. 166(6)            | Delete.   |
|  | s. 166(7)            | Delete.   |
|  | Ss. 167              | Delete.   |
|  | s. 280               | Delete.   |
|  | s. 281(1)            | Insert the words “not guilty by reason of mental incapacitation” immediately before the words “guilty subject to a plea agreement”.   |

|                                      |             |  |
|--------------------------------------|-------------|--|
| Penal Code (Cap. 63).                | s. 11       | Insert the following new paragraphs—<br><br>(a) on a balance of probabilities; or<br><br>(b) whenever the criminal responsibility of an accused with reference to the commission of an act or an omission which constitutes an offence is in issue, the burden of proof with reference to the criminal responsibility of the accused shall be on the party who raises the issue. |
| Penal Code (Cap. 63).                | s. 25(2)    | Delete and substitute therefor the following new subsection—<br><br>(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.   |
|                                      | s. 25(3)    | Delete.  |
| Prisons Act (Cap. 90).               | s. 38(3)    | Delete and substitute therefor the following new subsection—<br><br>(3) Upon the expiration of the term of imprisonment to which he has been sentenced, the provisions of section 15A 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.                                  |
|                                      | s. 74(1)(p) | Delete.  |
| Kenya Defence Forces Act (Cap. 199). | s. 178(3)   | Delete and substitute therefor the following new subsection—<br><br>(3) If a finding under subsection (1) has been promulgated, the court shall order that the accused be detained in a mental health facility.  |
|                                      | s. 179(2)   | Delete and substitute therefor the following new subsection—   |

|   |             |   |
|---|-------------|---|
|   |             | (2) When a special finding is made, the court shall refer the matter to the Mental Health Offenders Review Committee and shall in the interim order the offender to be committed to a mental health facility. |
| Mutual Legal Assistance Act (Cap. 75A). | s. 16(5)(a) | Insert the words “including any eligibility for release on remission pursuant to the Power of Mercy Act” immediately after the word “custody”.  |
| Victim Protection Act (Cap. 79A).       | s. 20(1)(c) | Delete and substitute therefor the following new paragraph—<br><br>(c) Power of Mercy Advisory Committee under the Power of Mercy Act, on the pardon of an offender.  |
| National Police Service Act (Cap. 84).  | s. 35(f)    | Insert the words “including retrieving and sealing of criminal records pursuant to the Power of Mercy Act” immediately after the word “records”.  |

## MEMORANDUM OF OBJECTS AND REASONS

### Statement of objects and reasons

The Bill 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 of the Advisory Committee on Power of Mercy and the powers and functions of the Advisory Committee on the Power of Mercy for connected purposes.

**Part I (Clauses 1-4)** provides for the preliminary provisions including the short title, interpretation, objects of the Act and guiding principles.

**Part II (Clauses 5-24)** provides for the composition of the Advisory Committee on the Power of Mercy as well as procedure for appointment of members of the Advisory Committee on Power of Mercy pursuant to Article 133(2)(c) of the Constitution. It also provides for the functions and powers of the Advisory Committee and provisions on the administration of the Advisory Committee including headquarters of the Advisory Committee, establishment of the Advisory Committee Secretariat and remuneration of the members of the Advisory Committee.

**Part III of the Bill (Clauses 25-36)** provides for forms of mercy recognised by Article 133(1) of the Constitution as well as the process of petitioning for the exercise of the various forms of mercy and eligibility criteria for each form of mercy.

**Part IV (Clauses 37-39)** provides for financial provisions including the source of funds of the Advisory Committee, the financial year, preparation of annual estimates, accounts and audit.

**Part V (Clauses 40-45)** provides for creation of awareness and capacity building by the Advisory Committee, sensitization of offender, public education on the power of mercy and procedures relating to the petition for exercise of power of mercy and access to information.

**Part VI (Clauses 46-51)** provides for miscellaneous provisions including collection and publication of data by the Advisory Committee, record keeping, duty of others to cooperate with the institutions established under the Act, general penalty for contravention of the provisions of the Act and forms by the Advisory Committee to be used for filing petitions.

**Part VII (Clause 52)** provides for power to make regulations by the Cabinet Secretary responsible for correctional services for the proper carrying into effect the provisions of the Act.

**Part VIII (clauses 53-68)** provides for repeal, savings, transitional provisions and consequential amendments.

**Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill delegates legislative powers to the Cabinet Secretary and the Advisory Committee. However, the Bill does not limit fundamental rights and freedoms.

**Statement on whether the Bill concerns county governments**

The Bill does not concern county governments in term of Article 110(1)(a) of the Constitution.

**Statement on whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of the Bill shall occasion additional expenditure of public funds.

Dated the 12th November, 2025.

**KIMANI ICHUNG'WAH,**  
*Leader of Majority Party.*



