(22 January 2014- to date)

[This version applied as from **22 January 2014**, i.e. the date of commencement of the Judicial Matters Amendment Act 42 of 2013 - **to date**]

CRIMINAL PROCEDURE ACT 51 OF 1977

(Gazette No. 5532, Notice No. 748, dated 6 May 1977. Commencement date: 22 July 1977 [Proc. R148, Gazette No. 5654, dated 15 July 1977].)

as amended by:

Criminal Procedure Matters Amendment Act 79 of 1978 – Government Notice 1176 in Government Gazette 6041, dated 2 June 1978. Commencement date: 2 June 1978.

Criminal Procedure Amendment Act 56 of 1979 – Government Notice 1171 in Government Gazette 6476, dated 1 June 1979. Commencement date: 1 June 1979.

Criminal Procedure Amendment Act 64 of 1982 – Government Notice 713 in Government Gazette 8161, dated 21 April 1982. Commencement date: 21 April 1982.

Appeals Amendment Act 105 of 1982 – Government Notice 1285 in Government Gazette 8295, dated 7 July 1982. Commencement date: 1 April 1983 [Proc. R36, Gazette No. 8617, dated 25 March 1983].

Criminal Law Amendment Act 59 of 1983 – Government Notice 1020 in Government Gazette 8702, dated 11 May 1983. Commencement date of sections 12 to 23: 11 May 1983.
Commencement date of section 11: 1 November 1983 [Proc. R163, Gazette No. 8937, dated 21 October 1983].

Criminal Procedure Matters Amendment Act 109 of 1984 – Government Notice 1687 in Government Gazette 9359, dated 15 August 1984. Commencement date: 1 September 1984 [Proc. R151, Gazette No. 9401, dated 31 August 1984].

Immorality and Prohibition of Mixed Marriages Amendment Act 72 of 1985 – Government Notice 1339 in Government Gazette 9804, dated 19 June 1985. Commencement date: 19 June 1985.

Criminal Procedure Amendment Act 33 of 1986 – Government Notice 630 in Government Gazette 10180, dated 4 April 1986. Commencement date of sections 1 to 5, 7 to 19 and 22 to 26: 4 April 1986.
Commencement date of section 6: 1 September 1987 [Proc. 126, Gazette No. 10898, dated 1 September 1987].
Commencement date of sections 20 and 21: to be proclaimed.

Special Courts for Black Abolition Act 34 of 1986 – Government Notice 722 in Government Gazette 10196, dated 23 April 1986. Commencement date: 1 August 1986 [Proc. R138, Gazette No. 10376, dated 28 July 1986].

Transfer of Powers and Duties of the State President Act 97 of 1986 – Government Notice 1909 in Government Gazette 10438, dated 12 September 1986. Commencement date: 3 October 1986 [Proc. 185, Gazette No. 10475, dated 3 October 1986].

Criminal Procedure Amendment Act 26 of 1987 – Government Notice 1395 in Government Gazette 10797, dated 24 June 1987. Commencement date: 24 June 1987, except sections 1, 4, 7 to 10, 12 and 13(a). Commencement date of sections 1, 4, 7 to 10, 12 and 13(a): to be proclaimed.

Law of Evidence and the Criminal Procedure Act Amendment Act 103 of 1987 – Government Notice 2386 in Government Gazette 11010, dated 23 October 1987. Commencement date: 23 October 1987.

Criminal Procedure Amendment Act 26 of 1987 – Government Notice 1395 in Government Gazette 10797, dated 24 June 1987. Commencement date of sections 1, 4, 7 to 10, 12 and 13(a): 26 February 1988 [Proc. No. 22, Gazette No. 11151, dated 26 February 1988].

Law of Evidence Amendment Act 45 of 1988 – Government Notice 829 in Government Gazette 11274, dated 22 April 1988. Commencement date: 3 October 1988 [Proc. No. 171, Gazette No. 11519, dated 30 September 1988].

Criminal Procedure Amendment Act 33 of 1986 – Government Notice 630 in Government Gazette 10180, dated 4 April 1986. Commencement date of sections 20 and 21: 1 February 1989 [Proc. R2, Gazette No. 11684, dated 27 January 1987].

Judicial Matters Amendment Act 77 of 1989 – Government Notice 1192 in Government Gazette 11931, dated 9 June 1989. Commencement date of section 6: 31 July 1989 [Proc. No. 143, Gazette No. 12030, dated 28 July 1989].

Criminal Procedure Amendment Act 8 of 1989 – Government Notice 427 in Government Gazette 11742, dated 15 March 1989. Commencement date: 1 August 1989 [Proc. No. 142, Gazette No. 12030, dated 28 July 1989].

Criminal Law and Criminal Procedure Act Amendment Act 39 of 1989 – Government Notice 648 in Government Gazette 11805, dated 12 April 1989. Commencement date: 1 August 1989 [Proc. R137, Gazette No. 12024, dated 28 July 1989].

Criminal Law Amendment Act 107 of 1990 – Government Notice 1624 in Government Gazette 12644, dated 27 July 1990. Commencement date: 27 July 1990, except sections 5, 16, 17 and 18. Commencement date of sections 5, 16, 17 and 18: to be proclaimed

Criminal Law Amendment Act 107 of 1990 – Government Notice 1624 in Government Gazette 12644, dated 27 July 1990. Commencement date of sections 5, 16, 17 and 18: 1 August 1990 [Proc. R128, Gazette No. 12678, dated 31 July 1990].

Transfer of Powers and Duties of the State President Act 51 of 1991 – Government Notice 963 in Government Gazette 13205, dated 29 April 1991. Commencement date: 29 April 1991 [Proc. No. 41, Gazette No. 13208, dated 29 April 1991].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of sections 35, 37 and 40 and of sections 38, 39, and 41 to 47 in respect of certain Magisterial Districts as indicated: 15 August 1991 [Proc. No. 78, Gazette No. 13469, dated 14 August 1991].

General Law Amendment Act 139 of 1992 – Government Notice 1926 in Government Gazette 14142, dated 15 July 1992. Commencement date of section 18: 15 August 1991.

Criminal Procedure Amendment Act 5 of 1991 – Government Notice 658 in Government Gazette 13110, dated 28 March 1991. Commencement date of sections 1 to 4, 8, 9 and 11 to 13: 23 December 1991 [Proc. R121, Gazette No. 13669, dated 20 December 1991]
Commencement date of sections 5 to 7, 10 and 14 to 15: to be proclaimed

Criminal Law Amendment Act 4 of 1992 – Government Notice 770 in Government Gazette 13818, dated 11 March 1992. Commencement date: 11 March 1992.

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of sections 38, 39, and 41 to 47 in respect of certain Magisterial Districts as indicated: 20 March 1992 [Proc. No. R20, Gazette No. 13881, dated 20 March 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 41(a) in so far as it inserts paragraph (i) in section 276(1) in respect of certain Magisterial Districts as indicated; section 42 in so far as it inserts section 276A(2) to (4) and section 43: 1 April 1992 [Proc. No. 32, Gazette No. 13904, dated 1 April 1992].

Criminal Procedure Amendment Act 5 of 1991 – Government Notice 658 in Government Gazette 13110, dated 28 March 1991. Commencement date of sections 5 to 7 and 14 to 15: 1 May 1992 [Proc. R41, Gazette No. 13966, dated 1 May 1992]
Commencement date of section 10: to be proclaimed

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 8 May 1992 [Proc. No. R40, Gazette No. 13986, dated 8 May 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 1 June 1992 [Proc. No. R48, Gazette No. 14007, dated 1 June 1992].

Criminal Law Amendment Act 135 of 1991 – Government Notice 1661 in Government Gazette 13411, dated 17 July 1991. Commencement date of section 4: 31 July 1992 [Proc. R85, Gazette No. 14196, dated 31 July 1992].

Criminal Law Second Amendment Act 126 of 1992 – Government Notice 1914 in Government Gazette 14130, dated 10 July 1992. Commencement date: 31 July 1992 [Proc. R80, Gazette No. 14185, dated 27 July 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 38, 41(b) and 47, 41(a) in so far as it adds paragraph (h) to section 276(1), 41(a) in so far as it adds paragraph (i) to section 276(1), section 42 in so far as it inserts section 276A(1), and section 46 in respect of certain Magisterial Districts as indicated: 1 August 1992 [Proc. No. R86, Gazette No. 14204, dated 1 August 1992].

General Law Amendment Act 139 of 1992 – Government Notice 1926 in Government Gazette 14142, dated 15 July 1992. Commencement date of sections 13 to 17: 7 August 1992 [Proc. R89, Gazette No. 14218, dated 7 August 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 1 September 1992 [Proc. No. R99, Gazette No. 14260, dated 1 September 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 38, 41(b), 45 and 47, 41(a) in so far as it adds paragraph (h) to section 276(1), section 42 in so far as it inserts section 276A(1) and section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 1 October 1992 [Proc. No. R115, Gazette No. 14313, dated 1 October 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 38, 41(b), 45 and 47, 41(a) in so far as it adds paragraph (h) to section 276(1), section 42 in so far as it inserts section 276A(1)

and section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 1 November 1992 [Proc. No. R121 Gazette No. 14385, dated 1 November 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 38, 41(b), 45 and 47, 41(a) in so far as it adds paragraph (h) to section 276(1), section 42 in so far as it inserts section 276A(1) and section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 1 December 1992 [Proc. No. R133 Gazette No. 14444, dated 1 December 1992].

Attorney-General Act 92 of 1992 – Government Notice 1779 in Government Gazette 14086, dated 1 July 1992. Commencement date: 31 December 1992 [Proc. R137, Gazette No. 14458, dated 31 December 1992].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of sections 38, 39, 41(a) in so far as it adds paragraph (h) to section 276(1), 41(a) in so far as it adds paragraph (i) to section 276(1), 41(b), 42 in so far as it inserts section 276A(1), 44, 45 and 47 in respect of certain Magisterial Districts as indicated: 1 February 1993 [Proc. No. R4, Gazette No. 14563, dated 1 February 1993].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of section 41(a) in so far as it adds paragraph (i) to section 276(1) in respect of certain Magisterial Districts as indicated: 1 March 1993 [Proc. No. R10, Gazette No. 14616, dated 1 March 1993].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of sections 38, 41(a) in so far as it adds paragraph (h) to section 276(1), 41(a) in so far as it adds paragraph (i) to section 276(1), 41(b), 42 in so far as it inserts section 276A(1), 45 and 47 in respect of certain Magisterial Districts as indicated: 1 April 1993 [Proc. No. R24, Gazette No. 14694, dated 1 April 1993].

Prevention and Treatment of Drug Dependency Act 20 of 1992 – Government Notice 789 in Government Gazette 13837, dated 13 March 1992. Commencement date of sections 50 and 51: 30 April 1993 [Proc. R35, Gazette No. 14759, dated 30 April 1993].

Correctional Services and Supervision Matters Amendment Act 122 of 1991 – Government Notice 1516 in Government Gazette 13367, dated 10 July 1991. Commencement date of sections 38, 41(a) in so far as it adds paragraph (h) to section 276(1), 41(b), 42 in so far as it inserts section 276A(1), 45 and 47 in respect of certain Magisterial Districts as indicated: 1 May 1993 [Proc. No. R37, Gazette No. 14766, dated 1 May 1993].

Criminal Law Amendment Act 135 of 1991 – Government Notice 1661 in Government Gazette 13411, dated 17 July 1991. Commencement date of sections 1, 2 and 3: 30 July 1993 [Proc. R64, Gazette No. 15024, dated 30 July 1993].

General Law Third Amendment Act 129 of 1993 – Government Notice 1296 in Government Gazette 14995, dated 23 July 1993. Commencement date of sections 38 and 40 to 51: 1 September 1993 [Proc. R81, Gazette No. 15102, dated 1 September 1993].

Criminal Matters Amendment Act 116 of 1993 – Government Notice 1283 in Government Gazette 14982, dated 20 July 1993. Commencement date: 1 November 1993 [Proc. R104, Gazette No. 15234, dated 29 October 1993].

General Law Third Amendment Act 129 of 1993 – Government Notice 1296 in Government Gazette 14995, dated 23 July 1993. Commencement date of section 39: 1 December 1993 [Proc. R126, Gazette No. 15308, dated 1 December 1993].

General Law Fifth Amendment Act 157 of 1993 – Government Notice 1870 in Government Gazette 15178, dated 15 October 1993. Commencement date: 1 December 1993 [Proc. R125, Gazette No. 15308, dated 1 December 1993].

General Law Sixth Amendment Act 204 of 1993 – Government Notice 131 in Government Gazette 15445, dated 26 January 1994. Commencement date: 1 March 1994 [Proc. R34, Gazette No. 15527, dated 1 March 1994].

Criminal Procedure Second Amendment Act 75 of 1995 – Government Notice 1474 in Government Gazette 16696, dated 21 September 1995. Commencement date: 21 September 1995

General Law Amendment Act 49 of 1996 – Government Notice 1601 in Government Gazette 17477, dated 4 October 1996. Commencement date: 4 October 1996.

Abolition of Restrictions on the Jurisdiction of Courts Act 88 of 1996 – Government Notice 1888 in Government Gazette 17599, dated 22 November 1996. Commencement date: 22 November 1996.

Criminal Procedure Second Amendment Act 85 of 1996 – Government Notice 1977 in Government Gazette 17646, dated 29 November 1996. Commencement date: 29 November 1996.

Justice Laws Rationalisation Act 18 of 1996 – Government Notice 632 in Government Gazette 17129, dated 19 April 1996. Commencement date: 1 April 1997 [Proc. R23, Gazette No. 17849, dated 12 March 1997].

Criminal Procedure Amendment Act 86 of 1996 – Government Notice 1884 in Government Gazette 17596, dated 20 November 1996. Commencement date: 1 September 1997, unless otherwise indicated [Proc. R49, Gazette No. 18231, dated 30 August 1997].

Abolition of Corporal Punishment Act 33 of 1997 – Government Notice 1164 in Government Gazette 18256, dated 5 September 1997. Commencement date: 5 September 1997.

International Co-operation in Criminal Matters Act 75 of 1996 – Government Notice 1875 in Government Gazette 17587, dated 20 November 1996. Commencement date: 1 January 1998. [Proc. R88, Gazette No. 18556, dated 19 December 1997].

Criminal Procedure Second Amendment Act 85 of 1997 – Government Notice 1641 in Government Gazette 18501, dated 10 December 1997. Commencement date: 1 August 1998. [Proc. R76, Gazette No. 19101, dated 29 July 1998].

Judicial Matters Amendment Act 34 of 1998 – Government Notice 893 in Government Gazette 19022, dated 3 July 1998. Commencement date of sections 3 to 5 and 8 to 10: 1 August 1998.

National Prosecuting Authority Act 32 of 1998 – Government Notice 892 in Government Gazette 19021, dated 3 July 1998. Commencement date of section 44: 16 October 1998. [Proc. R103, Gazette No. 19372, dated 16 October 1998].

Criminal Law Amendment Act 105 of 1997 – Government Notice 1659 in Government Gazette 18519, dated 19 December 1997. Commencement date of sections 1 to 50: 13 November 1998. [Proc. R116, Gazette No. 19475, dated 13 November 1998].

Judicial Matters Amendment Act 34 of 1998 – Government Notice 893 in Government Gazette 19022, dated 3 July 1998. Commencement date of sections 6 and 7: 15 January 1999. [Proc. R4, Gazette No. 19691, dated 15 January 1999].

Criminal Procedure Amendment Act 76 of 1997 – Government Notice 1632 in Government Gazette 18492, dated 5 December 1997. Commencement date of sections 1 to 3: 28 May 1999. [Proc. R50, Gazette No. 20036, dated 30 April 1999].

Maintenance Act 99 of 1998 – Government Notice 1534 in Government Gazette 19513, dated 27 November 1998. Commencement date: 26 November 1999. [Proc. R116, Gazette No. 20627, dated 15 November 1999].

Domestic Violence Act 116 of 1998 – Government Notice 1551 in Government Gazette 19537, dated 2 December 1998. Commencement date: 15 December 1999. [Proc. R97, Gazette No. 20469, dated 13 September 1999].

Witness Protection Act 112 of 1998 – Government Notice 1544 in Government Gazette 19523, dated 27 November 1998. Commencement date: 31 March 2000. [Proc. R16, Gazette No. 21039, dated 31 March 2000].

Judicial Matters Amendment Act 62 of 2000 – Government Notice 1357 in Government Gazette 21883, dated 13 December 2000. Commencement date: 23 March 2001. [Proc. R21, Gazette No. 22159, dated 23 March 2001].

Criminal Procedure Amendment Act 17 of 2001 – Government Notice 664 in Government Gazette 22483, dated 20 July 2001. Commencement date: 20 July 2001.

Judicial Matters Amendment Act 42 of 2001 – Government Notice 1313 in Government Gazette 22912, dated 7 December 2001. Commencement date of sections 6 and 7: 7 December 2001.

Criminal Procedure Second Amendment Act 62 of 2001 – Government Notice 1361 in Government Gazette 22933, dated 14 December 2001. Commencement date: 14 December 2001.

Criminal Matters Amendment Act 68 of 1998 – Government Notice 1249 in Government Gazette 19324, dated 7 October 1998. Commencement date: 28 February 2002. [Proc. R15, Gazette No. 23149, dated 28 February 2002].

Judicial Matters Amendment Act 42 of 2001 – Government Notice 1313 in Government Gazette 22912, dated 7 December 2001. Commencement date of section 8: 28 February 2002.

Criminal Procedure Amendment Act 86 of 1996 – Government Notice 1884 in Government Gazette 17596, dated 20 November 1996. Commencement date of section 2: 28 June 2002 [Proc. R35, Gazette No. 23384, dated 6 May 2002].

Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 - Government Notice 984 in Government Gazette 23642, dated 18 July 2002. Commencement date: 16 August 2002 [Proc. R67, Gazette No. 23761, dated 16 August 2002].

Judicial Matters Second Amendment Act 122 of 1998 – Government Notice 1636 in Government Gazette 19590, dated 11 December 1998. Commencement date of sections 7 and 8: 18 July 2003. [Proc. R54, Gazette No. 25206, dated 11 July 2003].

Criminal Procedure Amendment Act 42 of 2003 – Government Notice 1842 in Government Gazette 25862, dated 22 December 2003. Commencement date: 1 January 2004.

Prevention and Combating of Corrupt Activities Act 12 of 2004 – Government Notice 559 in Government Gazette 26311, dated 28 April 2004. Commencement date: 27 April 2004.

Parole and Correctional Supervision Amendment Act 87 of 1997– Government Notice 1643 in Government Gazette 18503, dated 12 December 1997. Commencement date: 1 October 2004. [Proc. 45, Gazette No. 26808, dated 1 October 2004].

Correctional Services Act 111 of 1998– Government Notice 1543 in Government Gazette 19522, dated 27 November 1998. Commencement date of section 137 (only in so far as it amends the Criminal Procedure Act 51 of 1977): 1 October 2004. [Proc. R38, Gazette No. 26626, dated 30 July 2004].

Judicial Matters Amendment Act 55 of 2002 – Government Notice 113 in Government Gazette 24277, dated 17 January 2003. Commencement date of sections 12 and 13: 18 February 2005. [Proc. R9, Gazette No. 27288, dated 14 February 2005].

Judicial Matters Second Amendment Act 55 of 2003 – Government Notice 428 in Government Gazette 26206, dated 31 March 2004. Commencement date: 31 March 2005. [Proc. R13, Gazette No. 27406, dated 22 March 2005].

Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004– Government Notice 128 in Government Gazette 27266, dated 11 February 2005. Commencement date: 20 May 2005. [Proc. R18, Gazette No. 27502, dated 15 April 2005].

Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 – Government Notice 122 in Government Gazette 24286, dated 22 January 2003. Commencement date: 30 September 2005. [Proc. R55, Gazette No. 28075, dated 30 September 2005].

Judicial Matters Amendment Act 22 of 2005 – Government Notice 21 in Government Gazette 28391, dated 11 January 2006. Commencement date of section 5: 11 January 2006.

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 - Government Notice 1224 in Government Gazette 30599, dated 14 December 2007. Commencement date: 16 December 2007.

Criminal Law (Sentencing) Amendment Act 38 of 2007 - Government Notice 1257 in Government Gazette 30638, dated 31 December 2007. Commencement date: 31 December 2007.

Judicial Matters Amendment Act 66 of 2008 – Government Notice 166 in Government Gazette 31908, dated 17 February 2009. Commencement date of sections 4, 9, 11 and 12: 17 February 2009.

Criminal Procedure Amendment Act 65 of 2008 – Government Notice 169 in Government Gazette 31911, dated 18 February 2009. Commencement date of sections 2 and 3: 6 May 2009. [Proc. R36, Gazette No. 32205, dated 6 May 2009].

Child Justice Act 75 of 2008 – Government Notice 549 in Government Gazette 32225, dated 11 May 2009. Commencement date: 1 April 2010.

Judicial Matters Amendment Act 66 of 2008 – Government Notice 166 in Government Gazette 31908, dated 17 February 2009. Commencement date of sections 10, 13, 14, 15 and 16: 10 September 2010. [Proc. R45, Gazette No. 33550, dated 10 September 2010].

Criminal Procedure Amendment Act 65 of 2008 – Government Notice 169 in Government Gazette 31911, dated 18 February 2009. Commencement date of section 1 in certain magisterial districts as indicated: 1 October 2010. [Proc. R57, Gazette No. 33605, dated 1 October 2010].

Criminal Procedure Amendment Act 65 of 2008 – Government Notice 169 in Government Gazette 31911, dated 18 February 2009. Commencement date of section 1 in certain magisterial districts as indicated: 15 February 2011. [Proc. R5, Gazette No. 34000, dated 4 February 2011].

Criminal Procedure Amendment Act 65 of 2008 – Government Notice 169 in Government Gazette 31911, dated 18 February 2009. Commencement date of section 1 in certain magisterial districts as indicated: 31 October 2011. [Proc. R59, Gazette No. 34713, dated 28 October 2011].

Criminal Procedure Amendment Act 65 of 2008 – Government Notice 169 in Government Gazette 31911, dated 18 February 2009. Commencement date of section 1 in certain magisterial districts as indicated: 11 November 2011. [Proc. 62, Gazette No. 34744, dated 10 November 2011].

Criminal Procedure Amendment Act 9 of 2012 – Government Notice 782 in Government Gazette 35714, dated 25 September 2012. Commencement date: 25 September 2012.

Criminal Law (Forensic Procedures) Amendment Act 6 of 2010 – Government Notice 873 in Government Gazette 33607, dated 5 October 2010. Commencement date: 18 January 2013 [Proc. 2, Gazette No. 36080, dated 18 January 2013].

Criminal Procedure Amendment Act 8 of 2013 – Government Notice 525 in Government Gazette 36691, dated 22 July 2013. Deemed to have come into operation on 10 September 2010.

Prevention and Combating of Torture of Persons Act 13 of 2013 – Government Notice 545 in Government Gazette 36716, dated 29 July 2013. Commencement date: 29 July 2013.

Judicial Matters Amendment Act 42 of 2013 – Government Notice 38 in Government Gazette 37254, dated 22 January 2014. Commencement date: 22 January 2014, unless otherwise indicated.

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

ACT

To make provision for procedures and related matters in criminal proceedings.

(Afrikaans text signed by the State President.)

(Assented to 21 April 1977.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:

ARRANGEMENT OF SECTIONS

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(Sections 50(6), 58 and 60(11) and (11A))

SCHEDULE 7

(Section 59A)

DEFINITIONS

1. Definitions

(1) In this Act, unless the context otherwise indicates –

"aggravating circumstances", in relation to –

(a) …….

(Paragraph (a) of the definition of "aggravating circumstances" deleted by section 1 of Act 107 of 1990)

(b) robbery or attempted robbery, means

(i) the wielding .of a fire-arm or any other dangerous weapon;

(ii) the infliction of grievous bodily harm; or

(iii) a threat to inflict grievous bodily harm,

by the offender or an accomplice on the occasion when the offence is committed, whether before or during or after the commission of the offence;

"bank" means a bank as defined in section 1 of the Banks Act, 1990 (Act 94 of 1990), and includes the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act 13 of 1944), and a mutual building society as defined in section 1 of the Mutual Building Societies Act, 1965 (Act 24 of 1965);

(Definition of "bank" substituted by section 1(a) of Act 5 of 1991)
(Definition of "bank" substituted by section 38 of Act 129 of 1993)

"charge" includes an indictment and a summons;

"Commissioner", means the Commissioner of Correctional Services as defined in section 138 of the Correctional Services Act, 1998, or a person authorized by him or her;

(Definition of "Commissioner" inserted by section 35 of Act 122 of 1991)
(Definition of "Commissioner" substituted by section 137 of Act 111 of 1998)

"correctional official" means a correctional official as defined in section 1 of the Correctional Services Act, 1998;

(Definition of "correctional official" inserted by section 35 of Act 122 of 1991)
(Definition of "correctional officer" substituted by section 137 of Act 111 of 1998)

"correctional supervision" means a community based sentence to which a person is subject in accordance with Chapter V and VI of the Correctional Service Act, 1998, and the regulations made under that Act if-

(a) he has been placed under that section 6(1)(c);

(b) it has been imposed on him under section 276(1)(h) or (i) and he, in the latter case, has been placed under that;

(c) his sentence has been converted into that under section 276A(3)(e)(ii), 286B(4)(b)(ii) or 287(4)(b) or he has been placed under that section 286B(5)(iii) or 287(4)(a);

(d) it is a condition on which the passing of his sentence has been postponed and he has been released under section 297(1)(a)(i)(ccA); or

(e) it is a condition on which the operation of-

(i) the whole or any part; or

(ii) any part,

of his sentence has been suspended under section 297(1)(b) or (4), respectively;

(Definition of "correctional supervision" inserted by section 35 of Act 122 of 1991)

(Definition of "correctional supervision" amended by section 16 of Act 116 of 1993)

(Definition of "correctional supervision" substituted by section 137 of Act 111 of 1998)

"criminal proceedings" includes a preparatory examination under Chapter 20;

"day" means the space of time between sunrise and sunset;

"justice" means a person who is a justice of the peace under the provisions of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963);

"law" …….

(Definition of "law" deleted by section 1 of Act 49 of 1996)

"local division" means a local division of the Supreme Court established under the Supreme Court Act, 1959 (Act 59 of 1959);

"lower court" means any court established under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944);

"magistrate" includes an additional magistrate and an assistant magistrate but not a regional magistrate;

"magistrate's court" means a court established for any district under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and includes any other court established under such provisions, other than a court for a regional division;

"Minister" means the Minister of Justice;

"night" means the space of time between sunset and sunrise;

"offence" means an act or omission punishable by law;

"peace officer" includes any magistrate, justice, police official, correctional official as defined in section 1 of the Correctional Services Act, 1959, and, in relation to any area, offence, class of offence or power referred to in a notice issued under section 334(1), any person who is a peace officer under that section;

(Definition of "peace officer" amended by section 4 of Act 18 of 1996)

"police official" means any member of the Force as defined in section 1 of the Police Act, 1958 (Act 7 of 1958), and **"police"** has a corresponding meaning;

(Definition of "police official" substituted by section 1(b) of Act 5 of 1991)

"premises" includes land, any building or structure, or any vehicle, conveyance, ship, boat or aircraft;

"province" …….

(Definition of "province" deleted by section 1 of Act 49 of 1996)

"provincial administration" …….

(Definition of "provincial administration" deleted by section 1 of Act 49 of 1996)

"provincial division" means a provincial division of the Supreme Court established under the Supreme Court Act, 1959 (Act 59 of 1959);

"regional court" means a court established for a regional division under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944);

"regional magistrate" means a magistrate appointed under the provisions of the Magistrates' Courts Act, 1944 (Act 32 of 1944), to the court for a regional division.

"Republic" …….

(Definition of "Republic" deleted by section 1 of Act 49 of 1996)

"rules of court" cans the rules made under section 43 of the Supreme Court Act, 1959 (Act 59 of 1959), or under section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985);

(Definition of "rules of court" substituted by section 1(c) of Act 5 of 1991)

"special superior court" …….

(Definition of "special superior court" deleted by section 7 of Act 62 of 2000)

"State"…….

(Definition of "State" deleted by section 1 of Act 49 of 1996)

"superior court" means a provincial or local division of the Supreme Court established under the Supreme Court Act, 1959 (Act 59 of 1959);

"supreme court" means the Supreme Court of South Africa established under the Supreme Court Act, 1959 (Act 59 of 1959);

"territory" …….

(Definition of "territory" deleted by section 1 of Act 49 of 1996)

"this Act" includes the rules of court and any regulations made under this Act.

(2) Any reference in any law to an inferior court shall, unless the context of such law indicates otherwise, be construed as a reference to a lower court as defined in subsection (1).

CHAPTER 1
PROSECUTING AUTHORITY

2. …….

(Section 2 repealed by section 44 of Act 32 of 1998)

3. ……

(Section 3 amended by section 11 of Act 59 of 1983 with effect from 1 November 1983)

(Section 3 repealed by section 8 of Act 92 of 19923)

4. …….

(Section 4 repealed by section 8 of Act 92 of 19923)

5. …….

(Section 5 repealed by section 44 of Act 32 of 1998)

6. Power to withdraw charge or stop prosecution

An attorney-general or any person conducting a prosecution at the instance of the State or any body or person conducting a prosecution under section 8, may –

(a) before an accused pleads to a charge, withdraw that charge, in which event the accused shall not be entitled to a verdict of acquittal in respect of that charge;

(b) at any time after an accused has pleaded, but before conviction, stop the prosecution in respect of that charge, in which event the court trying the accused shall acquit the accused in respect of that charge: Provided that where a prosecution is conducted by a person other than an attorney-general or a body or person referred to in section 8, the prosecution shall not be

stopped unless the attorney-general or any person authorized thereto by the attorney-general, whether in general or in any particular case, has consented thereto.

7. Private prosecution on certificate *nolle prosequi*

(1) In any case in which a Director of Public Prosecutions declines to prosecute for an alleged offence-

(a) any private person who proves some substantial and peculiar interest in the issue of the trial arising out of some injury which he individually suffered in consequence of the commission of the said offence;

(b) a husband, if the said offence was committed in respect of his wife;

(c) the wife or child or, if there is no wife or child, any of the next of kin of any deceased person, if the death of such person is alleged to have been caused by the said offence; or

(d) the legal guardian or curator of a minor or lunatic, if the said offence was committed against his ward,

may, subject to the provisions of section 9 and section 59(2) of the Child Justice Act, 2008, either in person or by a legal representative, institute and conduct a prosecution in respect of such offence in any court competent to try that offence.

(Section 7(1) substituted by section 99(1) of Act 75 of 2008)

(2)

(a) No private prosecutor under this section shall obtain the process of any court for summoning any person to answer any charge unless such private prosecutor produces to the officer authorized by law to issue such process a certificate signed by the attorney-general that he has seen the statements or affidavits on which the charge is based and that he declines to prosecute at the instance of the State.

(b) The attorney-general shall, in any case in which he declines to prosecute, at the request of the person intending to prosecute, grant the certificate referred to in paragraph (a).

(c) A certificate issued under this subsection shall lapse unless proceedings in respect of the offence in question are instituted by the issue of the process referred to in paragraph (a) within three months of the date of the certificate.

(d) The provisions of paragraph (c) shall apply also with reference to a certificate granted before the commencement of this Act under the provisions of any law repealed by this Act, and the date of such certificate shall, for the purposes of this paragraph, be deemed to be the date of commencement of this Act.

8. Private prosecution under statutory right

(1) Any body upon which or person upon whom the right to prosecute in respect of any offence is expressly conferred by law, may institute and conduct a prosecution in respect of such offence in any court competent to try that offence.

(2) A body which or a person who intends exercising a right of prosecution under subsection (1), shall exercise such right only after consultation with the attorney-general concerned and after the attorney-general has withdrawn his right of prosecution in respect of any specified offence or any specified class or category of offences with reference to which such body or person may by law exercise such right of prosecution.

(3) An attorney-general may, under subsection (2), withdraw his right of prosecution on such conditions as he may deem fit, including a condition that the appointment by such body or person of a prosecutor to conduct the prosecution in question shall be subject to the approval of the attorney-general, and that the attorney-general may at any time exercise with reference to any such prosecution any power which he might have exercised if he had not withdrawn his right of prosecution.

9. Security by private prosecutor

(1) No private prosecutor referred to in section 7 shall take out or issue any process commencing the private prosecution unless he deposits with the magistrate's court in whose area of jurisdiction the offence was committed –

(a) the amount the Minister may from time to time determine by notice in the *Gazette* as security that he will prosecute the charge against the accused to a conclusion without undue delay; and

(Section 9(1)(a) substituted by section 39 of Act 129 of 1993)

(b) the amount such court may determine as security for the costs which may be incurred in respect of the accused's defence to the charge.

(Section 9(1)(b) substituted by section 39 of Act 129 of 1993)

(2) The accused may, when he is called upon to plead to the charge, apply to the court hearing the charge to review the amount determined under subsection (1)(b), whereupon the court may, before the accused pleads –

(a) require the private prosecutor to deposit such additional amount as the court may determine with the magistrate's court in which the said amount was deposited; or

(b) direct that the private prosecutor enter into a recognizance, with or without sureties, in such additional amount as the court may determine.

(3) Where a private prosecutor fails to prosecute a charge against an accused to a conclusion without undue delay or where a charge is dismissed under section 11, the amount referred to in subsection (1)(a) shall be forfeited to the State.

10. Private prosecution in name of private prosecutor

(1) A private prosecution shall be instituted and conducted and all process in connection therewith issued in the name of the private prosecutor.

(2) The indictment, charge-sheet or summons, as the case may be, shall describe the private prosecutor with certainty and precision and shall, except in the case of a body referred to in section 8, be signed by such prosecutor or his legal representative.

(3) Two or more persons shall not prosecute in the same charge except where two or more persons have been injured by the same offence.

11. Failure of private prosecutor to appear

(1) If the private prosecutor does not appear on the day set down for the appearance of the accused in the magistrate's court or for the trial of the accused, the charge against the accused shall be dismissed unless the court has reason to believe that the private prosecutor was prevented from being present by circumstances beyond his control, in which event the court may adjourn the case to a later date.

(2) Where the charge is so dismissed, the accused shall forthwith be discharged from custody and may not in respect of that charge be prosecuted privately again but the attorney-general or a public prosecutor with the consent of the attorney-general may at the instance of the State prosecute the accused in respect of that charge.

12. Mode of conducting private prosecution

(1) A private prosecution shall, subject to the provisions of this Act, be proceeded with in the same manner as if it were a prosecution at the instance of the State: Provided that the person in respect of whom the private prosecution is instituted shall be brought before the court only by way of summons in the case of a lower court, or an indictment in the case of a superior court, except where he is under arrest in respect of an offence with regard to which a right of private prosecution is vested in any body or person under section 8.

(2) Where the prosecution is instituted under section 7(1) and the accused pleads guilty to the charge, the prosecution shall be continued at the instance of the State.

13. Attorney–general may intervene in private prosecution

An attorney-general or a local public prosecutor acting on the instructions of the attorney-general, may in respect of any private prosecution apply by motion to the court before which the private prosecution is pending to stop all further proceedings in the case in order that a prosecution for the offence in question may be instituted or, as the case may be, continued at the instance of the State, and the court shall make such an order.

14. Costs in respect of process

A private prosecutor, other than a prosecutor contemplated in section 8, shall in respect of any process relating to the private prosecution, pay to the clerk or, as the case may be, the registrar of the court in question, the fees prescribed under the rules of court for the service or execution of such process.

15. Costs of private prosecution

(1) The costs and expenses of a private prosecutor shall, subject to the provisions of subsection (2), be paid by the private prosecutor.

(2) The court may order a person convicted upon a private prosecution to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence: Provided that the provisions of this subsection shall not apply with reference to any prosecution instituted and conducted under section 8: Provided further that where a private prosecution is instituted after the grant of a certificate by an attorney-general that he declines to prosecute and the accused is convicted, the court may order the costs and expenses of the private prosecution, including the costs of an appeal arising from such prosecution, to be paid by the State.

(Section 15(2) amended by section 1 of Act 26 of 1987)

16. Costs of accused in private prosecution

(1) Where in a private prosecution, other than a prosecution contemplated in section 8, the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal, the court dismissing the charge or acquitting the accused or deciding in favour of the accused on appeal, may order the private prosecutor to pay to such accused the whole or any part of the costs and expenses incurred in connection with the prosecution or, as the case may be, the appeal.

(2) Where the court is of the opinion that a private prosecution was unfounded and vexatious, it shall award to the accused at his request such costs and expenses incurred in connection with the prosecution, as it may deem fit.

(Section 16 substituted by section 40 of Act 129 of 1993)

17. Taxation of costs

(1) The provisions of section 300(3) shall apply with reference to any order or award made under section 15 or 16 in connection with costs and expenses.

(2) Costs awarded under section 15 or 16 shall be taxed according to the scale, in civil cases, of the court which makes the award or, if the award is made by a regional court, according to the scale, in civil cases, of a magistrate's court, or, where there is more than one such scale, according to the scale determined by the court making the award.

18. Prescription of right to institute prosecution

The right to institute a prosecution for any offence, other than the offences of-

(a) murder;

(b) treason committed when the Republic is in a state of war;

(c) robbery, if aggravating circumstances were present;

(d) kidnapping;

(e) child-stealing;

(f) rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

(g) the crime of genocide, crimes against humanity and war crimes, as contemplated in section 4 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002; or

(h) trafficking in persons for sexual purposes by a person as contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act. 2007; or

(i) using a child or person who is mentally disabled for pornographic purposes as contemplated in sections 20(1) and 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,

shall, unless some other period is expressly provided for by law, lapse after the expiration of a period of 20 years from the time when the offence was committed.

(Section 18 substituted by section 27 of Act 105 of 1997 with effect from 27 April 1994)

(Section 18 amended by section 39 of Act 27 of 2002)

(Section 18 substituted by section 68 of Act 32 of 2007)

CHAPTER 2
SEARCH WARRANTS, ENTERING OF PREMISES, SEIZURE, FORFEITURE AND DISPOSAL OF PROPERTY CONNECTED WITH OFFENCES

19. Saving as to certain powers conferred by other laws

The provisions of this Chapter shall not derogate from any power conferred by any other law to enter any premises or to search any person, container or premises or to seize any matter, to declare any matter forfeited or to dispose of any matter.

20. State may seize certain articles

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article) –

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;

(b) which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere; or

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

21. Article to be seized under search warrant.

(1) Subject to the provisions of sections 22, 24 and 25, an article referred to in section 20 shall be seized only by virtue of a search warrant issued –

(a) by a magistrate or justice, if it appears to such magistrate or justice from information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person or upon or at any premises within his area of jurisdiction; or

(b) by a judge or judicial officer presiding at criminal proceedings, if it appears to such judge or judicial officer that any such article in the possession or under the control of any person or upon or at any premises is required in evidence at such proceedings.

(2) A search warrant issued under subsection (1) shall require a police official to seize the article in question and shall to that end authorize such police official to search any person identified in the

warrant, or to enter and search any premises identified in the warrant and to search any person found on or at such premises.

(3)

(a) A search warrant shall be executed by day, unless the person issuing the warrant in writing authorizes the execution thereof by night.

(b) A search warrant may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(4) A police official executing a warrant under this section or section 25 shall, after such execution, upon demand of any person whose rights in respect of any search or article seized under the warrant have been affected, hand to him a copy of the warrant.

22. Circumstances in which article may be seized without search warrant

A police official may without a search warrant search any person or container or premises for the purpose of seizing any article referred to in section 20 –

(a) if the person concerned consents to the search for and the seizure of the article in question, or if the person who may consent to the search of the container or premises consents to such search and the seizure of the article in question; or

(b) if he on reasonable grounds believes –

(i) that a search warrant will be issued to him under paragraph (a) of section 21(1) if he applies for such warrant; and

(ii) that the delay in obtaining such warrant would defeat the object of the search.

23. Search of arrested person and seizure of article

(1) On the arrest of any person, the person making the arrest may –

(a) if he is a peace officer, search the person arrested and seize any article referred to in section 20 which is found in the possession of or in the custody or under the control of the person arrested, and where such peace officer is not a police official, he shall forthwith deliver any such article to a police official; or

(b) if he is not a peace officer, seize any article referred to in section 20 which is in the possession of or in the custody or under the control of the person arrested and shall forthwith deliver any such article to a police official.

(Section 23 renumbered to 23(1) by section 1 of Act 33 of 1986)

(2) On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which may be used to cause bodily harm to himself or others.

(Section 23(2) added by section 1 of Act 33 of 1986)

24. Search of premises

Any person who is lawfully in charge or occupation of any premises and who reasonably suspects that stolen stock or produce, as defined in any law relating to the theft of stock or produce, is on or in the premises concerned, or that any article has been placed thereon or therein or is in the custody or possession of any person upon or in such premises in contravention of any law relating to intoxicating liquor, dependence-producing drugs, arms and ammunition or explosives, may at any time, if a police official is not readily available, enter such premises for the purpose of searching such premises and any person thereon or therein, and if any such stock, produce or article is found, he shall take possession thereof and forthwith deliver it to a police official.

(Section 24 substituted by section 12 of Act 59 of 1983)

25. Power of police to enter premises in connection with State security or any offence

(1) If it appears to a magistrate or justice from information on oath that there are reasonable grounds for believing –

(a) that the internal security of the Republic or the maintenance of law and order is likely to be endangered by or in consequence of any meeting which is being held or is to be held in or upon any premises within his area of jurisdiction; or

(b) that an offence has been or is being or is likely to be committed or that preparations or arrangements for the commission of any offence are being or are likely to be made in or upon any premises within his area of jurisdiction,

he may issue a warrant authorizing a police official to enter the premises in question at any reasonable time for the purpose –

(i) of carrying out such investigations and of taking such steps as such police official may consider necessary for the preservation of the internal security of the Republic or for the maintenance of law and order or for the prevention of any offence;

(ii) of searching the premises or any person in or upon the premises for any article referred to in section 20 which such police official on reasonable grounds suspects to be in or upon or at the premises or upon such person; and

(iii) of seizing any such article.

(2) A warrant under subsection (1) may be issued on any day and shall be of force until it is executed or is cancelled by the person who issued it or, if such person is not available, by a person with like authority.

(3) A police official may without warrant act under subparagraphs (i), (ii) and (iii) of subsection (1) if he on reasonable grounds believes –

(a) that a warrant will be issued to him under paragraph (a) or (b) of subsection (1) if he applies for such warrant; and

(b) that the delay in obtaining such warrant would defeat the object thereof.

26. Entering of premises for purposes of obtaining evidence

Where a police official in the investigation of an offence or alleged offence reasonably suspects that a person who may furnish information with reference to any such offence is on any premises, such police official may without warrant enter such premises for the purpose of interrogating such person and obtaining a statement from him: Provided that such police official shall not enter any private dwelling without the consent of the occupier thereof.

27. Resistance against entry or search

(1) A police official who may lawfully search any person or any premises or who may enter any premises under section 26, may use such force as may be reasonably necessary to overcome any resistance against such search or against entry of the premises, including the breaking of any door or window of such premises: Provided that such police official shall first audibly demand admission to the premises and notify the purpose for which he seeks to enter such premises.

(2) The proviso to subsection (1) shall not apply where the police official concerned is on reasonable grounds of the opinion that any article which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

28. Wrongful search an offence, and award of damages

(1) A police official –

(a) who acts contrary to the authority of a search warrant issued under section 21 or a warrant issued under section 25(1); or

(b) who, without being authorized thereto under this Chapter –

(i) searches any person or container or premises or seizes or detains any article; or

(ii) performs any act contemplated in subparagraph (i), (ii) or (iii) of section 25(1),

shall be guilty of an offence and liable on conviction to a fine not exceeding R600 or to imprisonment for a period not exceeding six months, and shall in addition be subject to an award under subsection (2).

(Words following upon section 28(1)(b)(ii) substituted by section 2 of Act 33 of 1986)

(2) Where any person falsely gives information on oath under section 21(1) or 25(1) and a search warrant or, as the case may be, a warrant is issued and executed on such information, and such person is in consequence of such false information convicted of perjury, the court convicting such person may, upon the application of any person who has suffered damage in consequence of the unlawful entry, search or seizure, as the case may be, or upon the application of the prosecutor acting on the instructions of that person, award compensation in respect of such damage, whereupon the provisions of section 300 shall *mutatis mutandis* apply with reference to such award.

29. Search to be conducted in decent and orderly manner

A search of any person or premises shall be conducted with strict regard to decency and order, and a woman shall be searched by a woman only, and if no female police official is available, the search shall be made by any woman designated for the purpose by a police official.

30. Disposal by police official of article after seizure

A police official who seizes any article referred to in section 20 or to whom any such article is under the provisions of this Chapter delivered –

(a) may, if the article is perishable, with due regard to the interests of the persons concerned, dispose of the article in such manner as the circumstances may require; or

(b) may, if the article is stolen property or property suspected to be stolen, with the consent of the person from whom it was seized, deliver the article to the person from whom, in the opinion of such police official, such article was stolen, and shall warn such person to hold such article available for production at any resultant criminal proceedings, if required to do so; or

(c) shall, if the article is not disposed of or delivered under the provisions of paragraph (a) or (b), give it a distinctive identification mark and retain it in police custody or make such other arrangements with regard to the custody thereof as the circumstances may require.

31. Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings

(1)

(a) If no criminal proceedings are instituted in connection with any article referred to in section 30(c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.

(b) If no person may lawfully possess such article or if the police official charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

(Section 31(1)(b) substituted by section 2 of Act 5 of 1991)

(2) The person who may lawfully possess the article in question shall be notified by registered post at his last-known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the State.

32. Disposal of article where criminal proceedings are instituted and admission of guilt fine is paid

(1) If criminal proceedings are instituted in connection with any article referred to in section 30(c) and the accused admits his guilt in accordance with the provisions of section 57, the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it, whereupon the provisions of section 31(2) shall apply with reference to any such person.

(2) If no person may lawfully possess such article or if the police official charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

(Section 32(2) substituted by section 3 of Act 5 of 1991)

33. Article to be transferred to court for purposes of trial

(1) If criminal proceedings are instituted in connection with any article referred to in section 30(c) and such article is required at the trial for the purposes of evidence or for the purposes of an order of court,

the police official charged with the investigation shall, subject to the provisions of subsection (2) of this section, deliver such article to the clerk of the court where such criminal proceedings are instituted.

(Section 33(1) substituted by section 4 of Act 5 of 1991)

(2) If it is by reason of the nature, bulk or value of the article in question impracticable or undesirable that the article should be delivered to the clerk of the court in terms of subsection (1), the clerk of the court may require the police official in charge of the investigation to retain the article in police custody or in such other custody as may be determined in terms of section 30(c).

(Section 33(2) substituted by section 4 of Act 5 of 1991)

(3)

(a) The clerk of the court shall place any article received under subsection (1) in safe custody, which may include the deposit of money in an official banking account if such money is not required at the trial for the purposes of evidence.

(b) Where the trial in question is to be conducted in a court other than a court of which such clerk is the clerk of the court, such clerk of the court shall –

(i) transfer any article received under subsection (1), other than money deposited in a banking account under paragraph (a) of this subsection, to the clerk of the court or, as the case may be, the registrar of the court in which the trial is to be conducted, and such clerk or registrar of the court shall place such article in safe custody;

(ii) in the case of any article retained in police custody or in some other custody in accordance with the provisions of subsection (2) or in the case of any money deposited in a banking account under paragraph (a) of this subsection, advise the clerk or registrar of such other court of the fact of such custody or such deposit, as the case may be.

34. Disposal of article after commencement of criminal proceedings

(1) The judge or judicial officer presiding at criminal proceedings shall at the conclusion of such proceedings, but subject to the provisions of this Act or any other law under which any matter shall or may be forfeited, make an order that any article referred to in section 33 –

(a) be returned to the person from whom it was seized, if such person may lawfully possess such article; or

(b) if such person is not entitled to the article or cannot lawfully possess the article, be returned to any other person entitled thereto, if such person may lawfully possess the article; or

(c) if no person is entitled to the article or if no person may lawfully possess the article or, if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the State.

(2) The court may, for the purpose of any order under subsection (1), hear such additional evidence, whether by affidavit or orally, as it may deem fit.

(3) If the judge or judicial officer concerned does not, at the conclusion of the relevant proceedings, make an order under subsection (1), such judge or judicial officer or, if he is not available, any other judge or judicial officer of the court in question, may at any time after the conclusion of the proceedings make any such order, and for that purpose hear such additional evidence, whether by affidavit or orally, as he may deem fit.

(4) Any order made under subsection (1) or (3) may be suspended pending any appeal or review.

(5) Where the court makes an order under paragraph (a) or (b) of subsection (1), the provisions of section 31(2) shall *mutatis mutandis* apply with reference to the person in favour of whom such order is made.

(6) If the circumstances so require or if the criminal proceedings in question cannot for any reason be disposed of, the judge or judicial officer concerned may make any order referred to in paragraph (a), (b) or (c) of subsection (1) at any stage of the proceedings.

35. Forfeiture of article to State

(1) A court which convicts an accused of any offence may, without notice to any person, declare –

(a) any weapon, instrument or other article by means whereof the offence in question was committed or which was used in the commission of such offence; or

(b) if the conviction is in respect of an offence referred to in Part I of Schedule 2, any vehicle, container or other article which was used for the purpose of or in connection with the commission of the offence in question or for the conveyance or removal of the stolen property,

and which was seized under the provisions of this Act, forfeited to the State: Provided that such forfeiture shall not affect any right referred to in subparagraph (i) or (ii) of subsection (4)(a) if it is proved that the person who claims such right did not know that such weapon, instrument, vehicle, container or other article was being used or would be used for the purpose of or in connection with the commission of the offence in question or, as the case may be, for the conveyance or removal of the stolen property in question, or that he could not prevent such use, and that he may lawfully possess such weapon, instrument, vehicle, container or other article, as the case may be.

(2) A court which convicts an accused or which finds an accused not guilty of any offence, shall declare forfeited to the State any article seized under the provisions of this Act which is forged or counterfeit or which cannot lawfully be possessed by any person.

(3) Any weapon, instrument, vehicle, container or other article declared forfeited under the provisions of subsection (1), shall be kept for a period of thirty days with effect from the date of declaration of forfeiture or, if an application is within that period received from any person for the determination of any right referred to in subparagraph (i) or (ii) of subsection (4)(a), until a final decision in respect of any such application has been given.

(4)

(a) The court in question or, if the judge or judicial officer concerned is not available, any judge or judicial officer of the court in question, may at any time within a period of three years with effect from the date of declaration of forfeiture, upon the application of any person, other than the accused, who claims that any right referred to in subparagraph (i) or (ii) of this paragraph is vested in him, inquire into and determine any such right, and if the court finds that the weapon, instrument, vehicle, container or other article in question –

(i) is the property of any such person, the court shall set aside the declaration of forfeiture and direct that the weapon, instrument, vehicle, container or other article, as the case may be, be returned to such person, or, if the State has disposed of the weapon, instrument, vehicle, container or other article in question, direct that such person be compensated by the State to the extent to which the State has been enriched by such disposal;

(ii) was sold to the accused in pursuance of a contract under which he becomes the owner of such weapon, instrument, vehicle, container or other article, as the case may be, upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of such weapon, instrument, vehicle, container or other article upon default of payment of the stipulated price or any part thereof –

(aa) the court shall direct that the weapon, instrument, vehicle, container or other article in question be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his rights under the contract to the weapon, instrument, vehicle, container or other article, but not exceeding the proceeds of the sale; or

(bb) if the State has disposed of the weapon, instrument, vehicle, container or other article in question, the court shall direct that the said seller be likewise compensated.

(b) If a determination by the court under paragraph (a) is adverse to the applicant, he may appeal therefrom as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result whereof the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

(c) When determining any rights under this subsection, the record of the criminal proceedings in which the declaration of forfeiture was made, shall form part of the relevant proceedings, and the court making the determination may hear such additional evidence, whether by affidavit or orally, as it may deem fit.

36. Disposal of article concerned in an offence committed outside Republic

(1) Where an article is seized in connection with which –

(a) an offence was committed or is on reasonable grounds suspected to have been committed in a country outside the Republic;

(b) there are reasonable grounds for believing that it will afford evidence as to the commission in a country outside the Republic of any offence or that it was used for the purpose of or in connection with such commission of any offence,

the magistrate within whose area of jurisdiction the article was seized may, on application and if satisfied that such offence is punishable in such country by death or by imprisonment for a period of twelve months or more or by a fine of five hundred rand or more, order such article to be delivered to a member of a police force established in such country who may thereupon remove it from the Republic.

(2) Whenever the article so removed from the Republic is returned to the magistrate, or whenever the magistrate refuses to order that the article be delivered as aforesaid, the article shall be returned to the person from whose possession it was taken, unless the magistrate is authorized or required by law to dispose of it otherwise.

CHAPTER 3
ASCERTAINMENT OF BODILY FEATURES OF PERSON

(Heading of Chapter 3 substituted by section 1 of Act 9 of 2012)

36A. Interpretation of Chapter 3

(1) For the purposes of this Chapter, unless the context indicates otherwise-

(a) **'appropriate person'** means any adult member of a child's family, or a care-giver of the child, which includes any person other than a parent or guardian who factually cares for a child, including-

(i) a foster parent;

(ii) a person who cares for a child with the implied or express consent of a parent or guardian of the child;

(iii) a person who cares for a child whilst the child is in temporary safe care;

(iv) the person at the head of a child and youth care centre where a child has been placed;

(v) the person at the head of a shelter;

(vi) a child and youth care worker, who cares for a child who is without appropriate family care in the community; and

(vii) a child at the head of a child-headed household, if such a child is 16 years or older;

(b) **'authorised person'** means, with reference to photographic images, fingerprints or body-prints, any police official in the performance of his or her official duties;

(c) **'body-prints'** means prints other than fingerprints, taken from a person and which are related to a crime scene, but excludes prints of the genitalia, buttocks or breasts of a person;

(d) **'child'** means a person under the age of 18 years;

(e) **'Child Justice Act'** means the Child Justice Act, 2008 (Act No. 75 of 2008);

(f) **'comparative search'** means the comparing of fingerprints, body-prints or photographic images, taken under any power conferred by this Chapter, by an authorised person against any database referred to in Chapter 5A of the South African Police Service Act; and

(g) **'South African Police Service Act'** means the South African Police Service Act, 1995 (Act No. 68 of 1995).

(2) Any police official who, in terms of this Act or any other law takes the fingerprints, a body-print or ascertains any bodily feature of a child must-

(a) have due regard to the personal rights relating to privacy, dignity and bodily integrity of the child;

(b) do so in a private area, not in view of the public;

(c) ensure the presence of a parent or guardian of the child, a social worker or an appropriate person; and

(d) treat and address the child in a manner that takes into account his or her gender and age.

(Section 36A inserted by section 2 of Act 6 of 2010)

36B. Powers in respect of fingerprints of accused and convicted persons

(1) A police official must take the fingerprints or must cause such prints to be taken of any-

(a) person arrested upon any charge related to an offence referred to in Schedule 1;

(b) person released on bail if such person's fingerprints were not taken upon arrest;

(c) person upon whom a summons has been served in respect of any offence referred to in Schedule 1;

(d) person convicted by a court and sentenced to a term of imprisonment without the option of a fine, whether suspended or not, if the fingerprints were not taken upon arrest;

(e) person convicted by a court in respect of any offence, which the Minister has by notice in the *Gazette* declared to be an offence for the purposes of this subsection.

(2) A police official may take or cause-

(a) fingerprints to be taken of any person arrested upon any charge; or

(b) fingerprints to be taken of a person deemed under section 57(6) to have been convicted in respect of any offence, which the Minister has by notice in the *Gazette* declared to be an offence for the purposes of this subsection.

(3) The fingerprints taken in terms of this section must be stored on the fingerprint database maintained by the National Commissioner, as provided for in Chapter 5A of the South African Police Service Act.

(4) A police official may again take the fingerprints of any person referred to in subsection (1), if-

(a) the fingerprints taken on the previous occasion do not constitute a complete set of his or her fingerprints;

(b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching; or

(c) the fingerprints taken were lost, misfiled or not stored on the database.

(5) The fingerprints taken under any power conferred by this section, may be the subject of a comparative search.

(6)

(a) Subject to paragraph (c), any fingerprints, taken under any power conferred by this section-

(i) must upon the conviction of an adult person be retained on a database referred to in Chapter 5A of the South African Police Service Act;

(ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act; and

(iii) in a case where a decision was made not to prosecute a person, if the person is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court or if he or she is discharged at a preparatory examination or if no criminal proceedings with reference to such fingerprints or body-prints were instituted against the person concerned in any court or if the prosecution declines to prosecute, must be destroyed within 30 days after the officer commanding the Division responsible for criminal records referred to in Chapter 5A of the South African Police Service Act has been notified.

(b) Fingerprints retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution.

(c) Subparagraphs (a)(i) and (ii) do not prohibit the use of any fingerprints taken under any powers conferred by this section, for the purposes of establishing if a person has been convicted of an offence.

(d) Any person who, with regard to any fingerprints, body-prints or photographic images referred to in this Chapter-

(i) uses or allows the use of those fingerprints, body-prints or photographic images for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution; or

(ii) tampers with or manipulates the process or the fingerprints, body-prints or images in question; or

(iii) falsely claims such fingerprints, body-prints or images to have been taken from a specific person whilst knowing them to have been taken from another person or source,

is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

(7) The National Commissioner must destroy the fingerprints of a child upon receipt of a Certificate of Expungement in terms of section 87(4) of the Child Justice Act.

(8) Subsection (1)(d) applies to any person convicted of any crime, irrespective of the sentence, including-

(a) any person serving such a sentence at the time of the commencement of this section; and

(b) where applicable, any person released on parole in respect of such a sentence, irrespective of the fact that such a person was convicted of the offence in question, prior to the commencement of this section.

(Section 36B inserted by section 2 of Act 6 of 2010)

36C. Fingerprints and body-prints for investigation purposes

(1) Any police official may without warrant take fingerprints or body-prints of a person or a group of persons, if there are reasonable grounds to-

(a) suspect that the person or that one or more of the persons in that group has committed an offence referred to in Schedule 1; and

(b) believe that the prints or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of those persons as possible perpetrators of the offence.

(2) Prints taken in terms of this section may-

(a) be examined for the purposes of the investigation of the relevant offence or caused to be so examined; and

(b) be subjected to a comparative search.

(3)

(a) Subject to paragraph (c), any fingerprints or body-prints, taken under any power conferred by this section-

(i) must upon the conviction of an adult person be retained on a database referred to in Chapter 5A of the South African Police Service Act;

(ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act; and

(iii) in a case where a decision was made not to prosecute a person, if the person is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court or if he or she is discharged at a preparatory examination or if no criminal proceeding with reference to such fingerprints or body-prints were instituted against the person concerned in any court or if the prosecution declines to prosecute, must be destroyed within 30 days after the officer commanding the Division responsible for criminal records referred to in Chapter 5A of the South African Police Service Act has been notified of such event as referred to in this paragraph.

(b) Fingerprints or body-prints which may be retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution.

(c) Subparagraphs (a)(i) and (ii), does not prohibit the use of any fingerprints or body-prints taken under any powers conferred by this section, for the purposes of establishing if a person has been convicted of an offence.

(d) The fingerprints or body-prints referred to in paragraph (a) must be stored on the database maintained by the National Commissioner, as provided for in Chapter 5A of the South African Police Service Act.

(e) The National Commissioner must destroy the fingerprints of a child upon receipt of a Certificate of Expungement in terms of section 87(4) of the Child Justice Act.

(Section 36C inserted by section 2 of Act 6 of 2010)

37. Powers in respect of body-prints and bodily appearance of accused and convicted persons

(1) Any police official may –

(a) take the body-prints or may cause any such prints to be taken –

(i) of any person arrested upon any charge;

(ii) of any such person released on bail;

(iii) of any person arrested in respect of any matter referred to in paragraph (n), (o) or (p) of section 40(1);

(iv) of any person upon whom a summons has been served in respect of any offence referred to in Schedule 1 or any offence with reference to which the suspension, cancellation or endorsement of any licence or permit or the disqualification in respect of any licence or permit is permissible or prescribed; or

(v) of any person convicted by a court; or

(vi) of any person deemed under section 57(6) to have been convicted in respect of any offence which the Minister has by notice in the *Gazette* declared to be an offence for the purposes of this subparagraph;

(b) make a person referred to in paragraph (a)(i) or (ii) or paragraph (a) or (b) of section 36B(1) available or cause such person to be made available for identification in such condition, position or apparel as the police official may determine;

(c) take such steps as he or she may deem necessary in order to ascertain whether the body of any person referred to in paragraph (a)(i) or (ii) or paragraph (a) or (b) of section 36B(1) has any mark, characteristic or distinguishing feature or shows any condition or appearance: Provided that a police official may not –

(i) take a blood sample of any person; or

(ii) examine the body of a person who is of a different gender to the police official;

(d) take a photographic image or may cause a photographic image to be taken of a person referred to in paragraph (a)(i) or (ii) or paragraph (a) or (b) of section 36B(1).

(2)

(a) Any medical officer of any prison or, if requested thereto by any police official, any registered medical practitioner or registered nurse may take such steps, including the taking of a blood sample, as may be deemed necessary in order to ascertain whether the body of any person referred to in paragraph (a)(i) or (ii) of subsection (1) or paragraph (a) or (b) of section 36B(1) has any mark, characteristic or distinguishing feature or shows any condition or appearance.

(b) If any registered medical practitioner attached to any hospital is on reasonable grounds of the opinion that the contents of the blood of any person admitted to such hospital for medical attention or treatment may be relevant at any later criminal proceedings, such medical practitioner may take a blood sample of such person or cause such sample to be taken.

(3) Any court before which criminal proceedings are pending may –

(a) in any case in which a police official is not empowered under subsection (1) or section 36B(1) to take fingerprints or body-prints or to take steps in order to ascertain whether the body of any person has any mark, characteristic or distinguishing feature or shows any condition or appearance, order that such prints be taken of any accused at such proceedings or that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain whether the body of any accused at such proceedings has any mark, characteristic or distinguishing feature or shows any condition or appearance;

(b) order that the steps, including the taking of a blood sample, be taken which such court may deem necessary in order to ascertain the state of health of any accused at such proceedings.

(4) Any court which has convicted any person of any offence or which has concluded a preparatory examination against any person on any charge, or any magistrate, may order that the fingerprints, body-prints or a photographic image of the person concerned be taken.

(5) Any fingerprints, body-prints or photographic images taken under any power conferred by this section, may be the subject of a comparative search.

(6)

(a) Subject to subsection (7), the body-prints or photographic images, taken under any power conferred by this section, and the record of steps taken under this section-

(i) must upon the conviction of an adult person be retained on a database provided for in section 5A of the South African Police Service Act;

(ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act; and

(iii) in a case where a decision was made not to prosecute a person, if the person is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court or if he or she is discharged at a preparatory examination or if no criminal proceeding with reference to such body-prints or photographic images was instituted against the person concerned in any court or if the prosecution declines to prosecute, must be destroyed within 30 days after the officer commanding the Division responsible for criminal records referred to in Chapter 5A of the South African Police Service Act has been notified.

(b) Body-prints or photographic images which may be retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence, the

identification of a missing person, the identification of unidentified human remains or the conducting of a prosecution.

(c) The body-prints or photographic images referred to in paragraph (a)(i) and (ii), must be stored on the database established by the National Commissioner, as provided for in Chapter 5A of the South African Police Service Act.

(7) Subsection (6) does not prohibit the use of any body-prints or photographic image taken under any powers conferred by this section, for the purposes of establishing if a person has been convicted of an offence.

(Section 37 amended by section 1 of Act 64 of 1982)

(Section 37 substituted by section 3 of Act 6 of 2010)

CHAPTER 4
METHODS OF SECURING ATTENDANCE OF ACCUSED IN COURT

38. Methods of securing attendance of accused in court

(1) Subject to section 4(2) of the Child Justice Act, 2008 (Act No. 75 of 2008), the methods of securing the attendance of an accused who is eighteen years or older in court for the purposes of his or her trial shall be arrest, summons, written notice and indictment in accordance with the relevant provisions of this Act.

(Section 38(1) substituted by section 4 of Act 42 of 2013)

(2) The methods of securing the attendance of an accused who is under the age of eighteen years at a preliminary inquiry or child justice court are those contemplated in section 17 of the Child Justice Act, 2008.

(Section 38 substituted by section 99(1) of Act 75 of 2008)

CHAPTER 5
ARREST

39. Manner and effect of arrest

(1) An arrest shall be effected with or without a warrant and, unless the person to be arrested submits to custody, by actually touching his body or, if the circumstances so require, by forcibly confining his body.

(2) The person effecting an arrest shall, at the time of effecting the arrest or immediately after effecting the arrest, inform the arrested person of the cause of the arrest or, in the case of an arrest effected by virtue of a warrant, upon demand of the person arrested hand him a copy of the warrant.

(3) The effect of an arrest shall be that the person arrested shall be in lawful custody and that he shall be detained in custody until he is lawfully discharged or released from custody.

40. Arrest by peace officer without warrant

(1) A peace officer may without warrant arrest any person –

(a) who commits or attempts to commit any offence in his presence;

(b) whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;

(c) who has escaped or who attempts to escape from lawful custody;

(d) who has in his possession any implement of housebreaking or carbreaking as contemplated in section 82 of the General Law Third Amendment Act, 1993, and who is unable to account for such possession to the satisfaction of the peace officer;

(Section 40(1)(d) substituted by section 41 of Act 129 of 1993)

(e) who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;

(f) who is found at any place by night in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence;

(g) who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce;

(h) who is reasonably suspected of committing or of having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition;

(i) who is found in any gambling house or at any gambling table in contravention of any law relating to the prevention or suppression of gambling or games of chance;

(j) who wilfully obstructs him in the execution of his duty;

(k) who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has been concerned in any act committed outside the Republic which, if committed in the Republic, would

have been punishable as an offence, and for which he is, under any law relating to extradition or fugitive offenders, liable to be arrested or detained in custody in the Republic;

(l) who is reasonably suspected of being a prohibited immigrant in the Republic in contravention of any law regulating entry into or residence in the Republic;

(m) who is reasonably suspected of being a deserter from the South African National Defence Force;

(Section 40(1)(m) amended by section 4 of Act 18 of 1996)

(n) who is reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;

(o) who is reasonably suspected of having failed to pay any fine or part thereof on the date fixed by order of court under this Act;

(p) who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or any law relating to prisons.

(q) who is reasonably suspected of having committed an act of domestic violence as contemplated in section (1) of the Domestic Violence Act, 1998, which constitutes an offence in respect of which violence is an element.

(Section 40(1)(q) added by section 20 of Act 116 of 1998)

(2) If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances.

41. Name and address of certain persons and power of arrest by peace officer without warrant

(1) A peace officer may call upon any person –

(a) whom he has power to arrest;

(b) who is reasonably suspected of having committed or of having attempted to commit an offence;

(c) who, in the opinion of the peace officer, may be able to give evidence in regard to the commission or suspected commission of any offence,

to furnish such peace officer with his full name and address, and if such person fails to furnish his full name and address, the peace officer may forthwith and without warrant arrest him, or, if such person furnishes to the peace officer a name or address which the peace officer reasonably suspects to be

false, the peace officer may arrest him without warrant and detain him for a period not exceeding twelve hours until such name or address has been verified.

(2) Any person who, when called upon under the provisions of subsection (1) to furnish his name and address, fails to do so or furnishes a false or incorrect name and address, shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 41(2) substituted by section 3 of Act 33 of 1986)

42. Arrest by private person without warrant

(1) Any private person may without warrant arrest any person –

(a) who commits or attempts to commit in his presence or whom he reasonably suspects of having committed an offence referred to in Schedule 1;

(b) whom he reasonably believes to have committed any offence and to be escaping from and to be freshly pursued by a person whom such private person reasonably believes to have authority to arrest that person for that offence;

(c) whom he is by any law authorized to arrest without warrant in respect of any offence specified in that law;

(d) whom he sees engaged in an affray.

(2) Any private person who may without warrant arrest any person under subsection (1)(a) may forthwith pursue that person, and any other private person to whom the purpose of the pursuit has been made known, may join and assist therein.

(3) The owner, lawful occupier or person in charge of property on or in respect of which any person is found committing any offence, and any person authorized thereto by such owner, occupier or person in charge, may without warrant arrest the person so found.

(Section 42(3) substituted by section 13 of Act 59 of 1983)

43. Warrant of arrest may be issued by magistrate or justice

(1) Any magistrate or justice may issue a warrant for the arrest of any person upon the written application of an attorney-general, a public prosecutor or a commissioned officer of police –

(a) which sets out the offence alleged to have been committed;

(b) which alleges that such offence was committed within the area of jurisdiction of such magistrate or, in the case of a justice, within the area of jurisdiction of the magistrate within whose district or area application is made to the justice for such warrant, or where such offence was not committed within such area of jurisdiction, which alleges that the person in respect of whom the application is made, is known or is on reasonable grounds suspected to be within such area of jurisdiction; and

(c) which states that from information taken upon oath there is a reasonable suspicion that the person in respect of whom the warrant is applied for has committed the alleged offence.

(2) A warrant of arrest issued under this section shall direct that the person described in the warrant shall be arrested by a peace officer in respect of the offence set out in the warrant and that he be brought before a lower court in accordance with the provisions of section 50.

(3) A warrant of arrest may be issued on any day and shall remain in force until it is cancelled by the person who issued it or, if such person is not available, by any person with like authority, or until it is executed.

44. Execution of warrants

A warrant of arrest issued under any provision of this Act may be executed by a peace officer, and the peace officer executing such warrant shall do so in accordance with the terms thereof.

45. Arrest on telegraphic authority

(1) A telegraphic or similar written or printed communication from any magistrate, justice or peace officer stating that a warrant has been issued for the arrest of any person, shall be sufficient authority to any peace officer for the arrest and detention of that person.

(2) The provisions of section 50 shall apply with reference to an arrest effected in accordance with subsection (1).

46. Non-liability for wrongful arrest

(1) Any person who is authorized to arrest another under a warrant of arrest or a communication under section 45 and who in the reasonable belief that he is arresting such person arrests another, shall be exempt from liability in respect of such wrongful arrest

(2) Any person who is called upon to assist in making an arrest as contemplated in subsection (1) or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorized by the warrant of arrest or the communication, shall likewise be exempt from liability in respect of such assistance or detention.

47. Private persons to assist in arrest when called upon

(1) Every male inhabitant of the Republic of an age not below sixteen and not exceeding sixty years shall, when called upon by any police official to do so, assist such police official –

(a) in arresting any person;

(b) in detaining any person so arrested.

(2) Any person who, without sufficient cause, fails to assist a police official as provided in subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 47(2) substituted by section 4 of Act 33 of 1986)

48. Breaking open premises for purpose of arrest

Any person who may lawfully arrest another in respect of any offence and who knows or reasonably suspects such other person to be on any premises, may, if he first audibly demands entry into such premises and notifies the purpose for which he seeks entry and fails to gain entry, break open, enter and search such premises for the purpose of effecting the arrest.

49. Use of force in effecting arrest

(1) For the purposes of this section-

(a) **'arrestor'** means any person authorised under this Act to arrest or to assist in arresting a suspect;

(b) **'suspect'** means any person in respect of whom an arrestor has a reasonable suspicion that such person is committing or has committed an offence; and

(c) **'deadly force'** means force that is likely to cause serious bodily harm or death and includes, but is not limited to, shooting at a suspect with a firearm.

(2) If any arrestor attempts to arrest a suspect and the suspect resists the attempt, or flees, or resists the attempt and flees, when it is clear that an attempt to arrest him or her is being made, and the suspect cannot be arrested without the use of force, the arrestor may, in order to effect the arrest, use such force as may be reasonably necessary and proportional in the circumstances to overcome the resistance or to prevent the suspect from fleeing, but, in addition to the requirement that the force must be reasonably necessary and proportional in the circumstances, the arrestor may use deadly force only if-

(a) the suspect poses a threat of serious violence to the arrestor or any other person; or

(b) the suspect is suspected on reasonable grounds of having committed a crime involving the infliction or threatened infliction of serious bodily harm and there are no other reasonable means of effecting the arrest, whether at that time or later.

(Section 49 substituted by section 7 of Act 122 of 1998)

(Section 49 substituted by section 1 of Act 9 of 2012)

50. Procedure after arrest

(1)

(a) Any person who is arrested with or without warrant for allegedly committing an offence, or for any other reason, shall as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place which is expressly mentioned in the warrant.

(b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.

(c) Subject to paragraph (d), if such an arrested person is not released by reason that-

(i) no charge is to be brought against him or her; or

(ii) bail is not granted to him or her in terms of section 59 or 59A,

he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest.

(d) If the period of 48 hours expires-

(i) outside ordinary court hours or on a day which is not an ordinary court day, the accused shall be brought before a lower court not later than the end of the first court day;

(ii) or will expire at, or if the time at which such period is deemed to expire under subparagraph (i) or (iii) is or will be, a time when the arrested person cannot, because of his or her physical illness or other physical condition, be brought before a lower court, the court before which he or she would, but for the illness or other condition, have been brought, may on the application of the prosecutor, which, if not made before the expiration of the period of 48 hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances relating to the illness or other condition are set out, supported by a certificate of a medical practitioner, authorise that the arrested person be detained at a place specified by the court and for such period as

the court may deem necessary so that he or she may recuperate and be brought before the court: Provided that the court may, on an application as aforesaid, authorise that the arrested person be further detained at a place specified by the court and for such period as the court may deem necessary; or

(Section 50(1)(d)(ii) substituted by section 3(a) of Act 34 of 1998)

(iii) at a time when the arrested person is outside the area of jurisdiction of the lower court to which he or she is being brought for the purposes of further detention and he or she is at such time in transit from a police station or other place of detention to such court, the said period shall be deemed to expire at the end of the court day next succeeding the day on which such arrested person is brought within the area of jurisdiction of such court.

(Section 50(1) amended by section 1 of Act 56 of 1979)

(Section 50(1) substituted by section 1(a) of Act 85 of 1997)

(2) For purposes of this section-

(a) "a court day" means a day on which the court in question normally sits as a court and "ordinary court day" has a corresponding meaning; and

(b) "ordinary court hours" means the hours from 9:00 until 16:00 on a court day.

(Section 50(1) substituted by section 1(a) of Act 85 of 1997)

(3) Subject to the provisions of subsection (6), nothing in this section shall be construed as modifying the provisions of this Act or any other law whereby a person under detention may be released on bail or on warning or on a written notice to appear in court.

(Section 50(3) substituted by section 1(a) of Act 75 of 1995)

(Section 50(3) substituted by section 8(a) of Act 62 of 2000)

(4) …….

(Section 50(4) added by section 37 of Act 122 of 1991)

(Section 50(4) deleted by section 99(1) of Act 75 of 2008)

(5) …….

(Section 50(5) added by section 37 of Act 122 of 1991)

(Section 50(5) deleted by section 99(1) of Act 75 of 2008)

(6)

(a) At his or her first appearance in court a person contemplated in subsection (1)(a) who-

(i) was arrested for allegedly committing an offence shall, subject to this subsection and section 60-

(aa) be informed by the court of the reason for his or her further detention; or
(Section 50(6)(a)(i)(aa) substituted by section 3(b) of Act 34 of 1998)

(bb) be charged and be entitled to apply to be released on bail,

and if the accused is not so charged or informed of the reason for his or her further detention, he or she shall be released; or

(ii) was not arrested in respect of an offence, shall be entitled to adjudication upon the cause for his or her arrest.

(b) An arrested person contemplated in paragraph (a)(i) is not entitled to be brought to court outside ordinary court hours.

(c) The bail application of a person who is charged with an offence referred to in Schedule 6 must be considered by a magistrate's court: Provided that the Director of Public Prosecutions concerned, or a prosecutor authorised thereto in writing by him or her may, if he or she deems it expedient or necessary for the administration of justice in a particular case, direct in writing that the application must be considered by a regional court.
(Section 50(6)(c) substituted by section 8(b) of Act 62 of 2000)

(d) The lower court before which a person is brought in terms of this subsection, may postpone any bail proceedings or bail application to any date or court, for a period not exceeding seven days at a time, on the terms which the court may deem proper and which are not inconsistent with any provision of this Act, if-

(i) the court is of the opinion that it has insufficient information or evidence at its disposal to reach a decision on the bail application;

(ii) the prosecutor informs the court that the matter has been or is going to be referred to an attorney-general for the issuing of a written confirmation referred to in section 60(11A);

(iii) ……
(Section 50(6)(d)(iii) deleted by section 8(c) of Act 62 of 2000)

(iv) it appears to the court that it is necessary to provide the State with a reasonable opportunity to-

(aa) procure material evidence that may be lost if bail is granted; or

(bb) perform the functions referred to in section 37; or

(v) it appears to the court that it is necessary in the interests of justice to do so.

(Section 50(6) added by section 1(b) of Act 75 of 1995)

(Section 50(6) substituted by section 1(b) of Act 85 of 1997)

(7) If a person is arrested on suspicion of having committed an offence, but a charge has not been brought against him or her because further investigation is needed to determine whether a charge may be brought against him or her, the investigation in question shall be completed as soon as it is reasonably possible and the person in question shall as soon as it is reasonably possible thereafter, and in any event not later than the day after his or her arrest contemplated in subsections (1) and (2), be brought before an ordinary court of law to be charged and enabled to institute bail proceedings in accordance with subsection (6) or be informed of the reason for his or her further detention, failing which he or she shall be released.

(Section 50(7) added by section 1(b) of Act 75 of 1995)

(Section 50(7) deleted by section 1(c) of Act 85 of 1997)

51. Escaping and aiding escaping before incarceration, and penalties therefor

(1) Any person who escapes or attempts to escape from custody after he or she has been lawfully arrested and before he or she has been lodged in any correctional facility, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section 117 of the Correctional Services Act, 1998 (Act No. 111 of 1998).

(Section 51(1) substituted by section 4 of Act 66 of 2008)

(2) Any person who rescues or attempts to rescue from custody any person after he or she has been lawfully arrested and before he or she has been lodged in any correctional facility, police-cell or lock-up, or who aids the person to escape or to attempt to escape from custody, or who harbours or conceals or assists in harbouring or concealing any person who escapes from custody after he or she has been lawfully arrested and before he or she has been lodged in any correctional facility, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section 117 of the said Correctional Services Act, 1998.

(Section 51(2) substituted by section 4 of Act 66 of 2008)

(3) Notwithstanding anything to the contrary in any law contained, a lower court shall have jurisdiction to try any offence under this section and to impose any penalty prescribed in respect thereof.

52. Saving of other powers of arrest

No provision of this Chapter relating to arrest shall be construed as removing or diminishing any authority expressly conferred by any other law to arrest, detain or put any restraint upon any person.

53. Saving of civil law rights and liability

Subject to the provisions of sections 46 and 331, no provision of this Chapter relating to arrest shall be construed as removing or diminishing any civil right or liability of any person in respect of a wrongful or malicious arrest.

CHAPTER 6
SUMMONS

54. Summons as method of securing attendance of accused in magistrate's court

(1) Where the prosecution intends prosecuting an accused in respect of any offence and the accused is not in custody in respect of that offence and no warrant has been or is to be issued for the arrest of the accused for that offence, the prosecutor may secure the attendance of the accused for a summary trial in a lower court having jurisdiction by drawing up the relevant charge and handing such charge, together with information relating to the name and, where known and where applicable, the residential address and occupation or status of the accused, to the clerk of the court who shall –

(a) issue a summons containing the charge and the information handed to him by the prosecutor, and specifying the place, date and time for the appearance of the accused in court on such charge; and

(b) deliver such summons, together with so many copies thereof as there are accused to be summoned, to a person empowered to serve a summons in criminal proceedings.

(2)

(a) Except where otherwise expressly provided by any law, the summons shall be served by a person referred to in subsection (1)(b) by delivering it to the person named therein or, if he cannot be found, by delivering it at his residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there.

(b) A return by the person who served the summons that the service thereof has been effected in terms of paragraph (a), may, upon the failure of the person concerned to attend the relevant proceedings, be handed in at such proceedings and shall be *prima facie* proof of such service.

(3) A summons under this section shall be served on an accused so that he is in possession thereof at least fourteen days (Sundays and public holidays excluded) before the date appointed for the trial.

55. Failure of accused to appear on summons

(1) Subject to section 4(2) of the Child Justice Act, 2008, an accused who is eighteen years or older and who is summoned under section 54 to appear at criminal proceedings and who fails to appear at the place and on the date and at the time specified in the summons or who fails to remain in attendance at

such proceedings, shall be guilty of an offence and liable to the punishment prescribed under subsection (2).

(Section 55(1) substituted by section 99(1) of Act 75 of 2008)

(1A) The provisions of section 46 of the Child Justice Act, 2008, apply to an accused who is under the age of eighteen years and who fails to appear at a preliminary inquiry in terms of a summons issued under that Act.

(Section 55(1A) inserted by section 99(1) of Act 75 of 2008)

(2) The court may, if satisfied from the return of service referred to in paragraph (b) of section 54(2) that the summons was served on the accused in terms of paragraph (a) of that section and that the accused has failed to appear at the place and on the date and at the time specified in the summons, or if satisfied that the accused has failed to remain in attendance at the proceedings in question, issue a warrant for his arrest and, when he is brought before the court, in a summary manner enquire into his failure so to appear or so to remain in attendance and unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding R300 or to imprisonment for a period not exceeding three months:

(Words preceding the proviso to section 55(2) substituted by section 5(a) of Act 33 of 1986)

Provided that where a warrant is issued for the arrest of an accused who has failed to appear in answer to the summons, the person executing the warrant –

(a) may, where it appears to him that the accused received the summons in question and that the accused will appear in court in accordance with a warning under section 72; or

(b) shall, where it appears to him that the accused did not receive the summons in question or that the accused has paid an admission of guilt fine in terms of section 57 or that there are other grounds on which it appears that the failure of the accused to appear on the summons was not due to any fault on the part of the accused, for which purpose he may require the accused to furnish an affidavit or affirmation,

release the accused on warning under section 72 in respect of the offence of failing to appear in answer to the summons, whereupon the provisions of that section shall *mutatis mutandis* apply with reference to the said offence.

(2A)

(a) If the court issues a warrant of arrest in terms of subsection (2) in respect of a summons which is endorsed in accordance with section 57(1)(a) –

(i) an endorsement to the same effect shall be made on the warrant in question;

(ii) the court may make a further endorsement on the warrant to the effect that the accused may admit his guilt in respect of the failure to appear in answer to the summons or to remain in attendance at the criminal proceedings, and that he may upon arrest pay to a clerk of the court or at a police station a fine stipulated on the warrant in respect of such failure, which fine shall not exceed the amount to be imposed in terms of subsection (2), without appearing in court.

(b) The fine paid in terms of paragraph (a) at a police station or to a clerk of a magistrate's court other than the magistrate's court which issued the warrant of arrest, shall, as soon as is expedient, together with the warrant of arrest in question, be forwarded to the clerk of the court which issued that warrant, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such admission of guilt in the criminal record book for admission of guilt, whereupon the accused concerned shall be deemed to have been convicted by the court in respect of the offence in question.

(Section 55(2A) inserted by section 5(b) of Act 33 of 1986)
(Section 55(2A) substituted by section 3 of Act 4 of 1992)

(3)

(a) If, in any case in which a warrant of arrest is issued, it was permissible for the accused in terms of section 57 to admit his guilt in respect of the summons on which he failed to appear and to pay a fine in respect thereof without appearing in court, and the accused is arrested under such warrant in the area of jurisdiction of a magistrate's court other than the magistrate's court which issued the warrant of arrest such other magistrate's court may, notwithstanding any provision of this Act or any other law to the contrary, and if satisfied that the accused has, since the date on which he failed to appear on the summons in question, admitted his guilt in respect of that summons and has paid a fine in respect thereof without appearing in court, in a summary manner enquire into his failure to appear on such summons and, unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 55(3)(a) substituted by section 14 of Act 59 of 1983)
(Section 55(3)(a) substituted by section 5(c) of Act 33 of 1986)

(b) In proceedings under paragraph (a) before such other magistrate's court, it shall be presumed, upon production in such court of the relevant warrant of arrest, that the accused failed to appear on the summons in question, unless the contrary is proved.

CHAPTER 7
WRITTEN NOTICE TO APPEAR IN COURT

56. Written notice as method of securing attendance of accused in magistrate's court

(1) If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall –

(Words preceding section 56(1)(a) substituted by section 2 of Act 109 of 1984)

(Words preceding section 56(1)(a) substituted by section 5 of Act 5 of 1991)

(a) specify the name, the residential address and the occupation or status of the accused;

(b) call upon the accused to appear at a place and on a date and at a time specified in the written notice to answer a charge of having committed the offence in question;

(c) contain an endorsement in terms of section 57 that the accused may admit his guilt in respect of the offence in question and that he may pay a stipulated fine in respect thereof without appearing in court; and

(d) contain a certificate under the hand of the peace officer that he has handed the original of such written notice to the accused and that he has explained to the accused the import thereof.

(2) If the accused is in custody, the effect of a written notice handed to him under subsection (1) shall be that he be released forthwith from custody.

(3) The peace officer shall forthwith forward a duplicate original of the written notice to the clerk of the court which has jurisdiction.

(4) The mere production to the court of the duplicate original referred to in subsection (3) shall be *prima facie* proof of the issue of the original thereof to the accused and that such original was handed to the accused.

(5) The provisions of section 55 shall *mutatis mutandis* apply with reference to a written notice handed to an accused under subsection (1).

CHAPTER 8
ADMISSION OF GUILT FINE

57. Admission of guilt and payment of fine without appearance in court

(1) Where –

(a) a summons is issued against an accused under section 54 (in this section referred to as the summons) and the public prosecutor or the clerk of the court concerned on reasonable grounds

believes that a magistrate's court, on convicting the accused of the offence in question, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, and such public prosecutor or clerk of the court endorses the summons to the effect that the accused may admit his guilt in respect of the offence in question and that he may pay a fine stipulated on the summons in respect of such offence without appearing in court; or

(Section 57(1)(a) substituted by section 3(a) of Act 109 of 1984)

(Section 57(1)(a) substituted by section 6(a) of Act 5 of 1991)

(b) a written notice under section 56 (in this section referred to as the written notice) is handed to the accused and the endorsement in terms of paragraph (c) of subsection (1) of that section purports to have been made by a peace officer,

the accused may, without appearing in court, admit his guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the magistrate's court which has jurisdiction or at any police station within the area of jurisdiction of that court or, if the summons or written notice in question is endorsed to the effect that the fine may be paid at a specified local authority, at such local authority.

(2)

(a) The summons or the written notice may stipulate that the admission of guilt fine shall be paid before a date specified in the summons or written notice, as the case may be.

(b) An admission of guilt fine may be accepted by the clerk of the court concerned notwithstanding that the date referred to in paragraph (a) or the date on which the accused should have appeared in court has expired.

(3)

(a)

(i) Subject to the provisions of subparagraphs (ii) and (iii), an accused who intends to pay an admission of guilt fine in terms of subsection (1), shall surrender the summons or the written notice, as the case may be, at the time of the payment of the fine.

(ii) If the summons or written notice, as the case may be, is lost or is not available and the copy thereof known as the control document-

(aa) is not available at the place of payment referred to in subsection (1), the accused shall surrender a copy of the summons or written notice, as the case may be, at the time of the payment of the fine; or

(bb) is available at the place of payment referred to in subsection (1), the admission of guilt fine may be accepted without the surrender of a copy of the summons or written notice, as the case may be.

(iii) If an accused in respect of whom a warrant has been endorsed in terms of section 55(2A) intends to pay the relevant admission of guilt fine, the clerk of the court may, after he has satisfied himself that the warrant is so endorsed, accept the admission of guilt fine without the surrender of the summons, written notice or copy thereof, as the case may be.

(Section 57(3)(a) substituted by section 2(a) of Act 26 of 1987)

(b) A copy referred to in paragraph (a)(ii) may be obtained by the accused at the magistrate's court, police station or local authority where the copy of the summons or written notice in question known as the control document is filed.

(c) Notwithstanding the provisions of subsection (1), an accused referred to in paragraph (a)(iii) may pay the admission of guilt fine in question to the clerk of the court where he appears in consequence of such warrant, and if the said clerk of the court is not the clerk of the magistrate's court referred to in subsection (1), he shall transfer such admission of guilt fine to the latter clerk of the magistrate's court,

(Section 57(3)(c) substituted by section 2(b) of Act 26 of 1987)

(Section 57(3) substituted by section 6 of Act 33 of 1986 with effect from 1 September 1986)

(4) No provision of this section shall be construed as preventing a public prosecutor attached to the court concerned from reducing an admission of guilt fine on good cause shown.

(5)

(a) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with a determination which the magistrate of the district or area in question may from time to time make in respect of any offence or, if the magistrate has not made such a determination, in accordance with an amount determined in respect of any particular summons or any particular written notice by either a public prosecutor attached to the court of such magistrate or a police official of or above the rank of non-commissioned officer attached to a police station within the magisterial district or area in question or, in the absence of such a police official at any such police station, by the senior police official then in charge at such police station.

(b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount determined by the Minister from time to time by notice in the *Gazette*, whichever is the lesser.

(Section 57(5)(b) substituted by section 3(b) of Act 109 of 1984)

(Section 57(5)(b) substituted by section 6(b) of Act 5 of 1991)

(6) An admission of guilt fine paid at a police station or a local authority in terms of subsection (1) and the summons or, as the case may be, the written notice surrendered under subsection (3), shall, as soon

as is expedient, be forwarded to the clerk of the magistrate's court which has jurisdiction, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such summons or, as the case may be, such written notice and of any summons or written notice surrendered to the clerk of the court under subsection (3), in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question.

(7) The judicial officer presiding at the court in question shall examine the documents and if it appears to him that a conviction or sentence under subsection (6) is not in accordance with justice or that any such sentence, except as provided in subsection (4), is not in accordance with a determination made by the magistrate under subsection (5) or, where the determination under that subsection has not been made by the magistrate, that the sentence is not adequate, such judicial officer may set aside the conviction and sentence and direct that the accused be prosecuted in the ordinary course, whereupon the accused may be summoned to answer such charge as the public prosecutor may deem fit to prefer: Provided that where the admission of guilt fine which has been paid exceeds the amount determined by the magistrate under subsection (5), the said judicial officer may, in lieu of setting aside the conviction and sentence in question, direct that the amount by which the said admission of guilt fine exceeds the said determination be refunded to the accused concerned.

57A. Admission of guilt and payment of fine after appearing in court

(1) If an accused who is alleged to have committed an offence has appeared in court and is-

(a) in custody awaiting trial on that charge and not on another more serious charge;

(b) released on bail under section 59 or 60; or

(c) released on warning under section 72,

the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again.

(2) Such notice shall contain-

(a) the case number;

(b) a certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered, as the case may be, the original of such notice to the accused and that he or she explained to the accused the import thereof; and

(c) the particulars and instructions contemplated in paragraphs (a) and (b) of section 56(1).

(3) The public prosecutor shall endorse the charge-sheet to the effect that a notice contemplated in this section has been issued and he or she or the peace officer, as the case may be, shall forthwith forward a duplicate original of the notice to the clerk of the court which has jurisdiction.

(4) The provisions of sections 55, 56(2) and (4) and 57(2) to (7), inclusive, shall apply mutatis mutandis to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.

(Section 57A inserted by section 1 of Act 86 of 1996)

CHAPTER 9
BAIL

58. Effect of bail

The effect of bail granted in terms of the succeeding provisions is that an accused who is in custody shall be released from custody upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his bail, and that he shall appear at the place and on the date and at the time appointed for his trial or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned, and that the release shall, unless sooner terminated under the said provisions, endure until a verdict is given by a court in respect of the charge to which the offence in question relates, or, where sentence is not imposed forthwith after verdict and the court in question extends bail, until sentence is imposed: Provided that where a court convicts an accused of an offence contemplated in Schedule 5 or 6, the court shall, in considering the question whether the accused's bail should be extended, apply the provisions of section 60(11)(a) or (b), as the case may be, and the court shall take into account-

(a) the fact that the accused has been convicted of that offence; and

(b) the likely sentence which the court might impose.

(Section 58 amended by section 2 of Act 85 of 1997)

59. Bail before first appearance of accused in lower court

(1)

(a) An accused who is in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2 may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official.

(Section 59(1)(a) substituted by section 3 of Act 26 of 1987)
(Section 59(1)(a) substituted by section 1 of Act 126 of 1992)
(Section 59(1)(a) substituted by section 2 of Act 75 of 1995)

(b) The police official referred to in paragraph (a) shall, at the time of releasing the accused on bail, complete and hand to the accused a recognizance on which a receipt shall be given for the sum of money deposited as bail and on which the offence in respect of which the bail is granted and the place, date and time of the trial of the accused are entered.

(c) The said police official shall forthwith forward a duplicate original of such recognizance to the clerk of the court which has jurisdiction.

(2) Bail granted under this section shall, if it is of force at the time of the first appearance of the accused in a lower court, but subject to the provisions of section 62, remain in force after such appearance in the same manner as bail granted by the court under section 60 at the time of such first appearance.

59A. Attorney-general may authorise release on bail

(1) An attorney-general, or a prosecutor authorised thereto in writing by the attorney-general concerned, may, in respect of the offences referred to in Schedule 7 and in consultation with the police official charged with the investigation, authorise the release of an accused on bail.

(2) For the purposes of exercising the functions contemplated in subsections (1) and (3) an attorney-general may, after consultation with the Minister, issue directives.

(3) The effect of bail granted in terms of this section is that the person who is in custody shall be released from custody-

(a) upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his or her bail at his or her place of detention contemplated in section 50(1)(a);

(b) subject to reasonable conditions imposed by the attorney-general or prosecutor concerned; or

(c) the payment of such sum of money or the furnishing of such guarantee to pay and the imposition of such conditions.

(4) An accused released in terms of subsection (3) shall appear on the first court day at the court and at the time determined by the attorney-general or prosecutor concerned and the release shall endure until he or she so appears before the court on the first court day.

(5) The court before which a person appears in terms of subsection (4)-

(a) may extend the bail on the same conditions or amend such conditions or add further conditions as contemplated in section 62; or

(b) shall, if the court does not deem it appropriate to exercise the powers contemplated in paragraph (a), consider the bail application and, in considering such application, the court has the jurisdiction relating to the powers, functions and duties in respect of bail proceedings in terms of section 60.

(6) The provisions of section 64 with regard to the recording of bail proceedings by a court apply, with the necessary changes, in respect of bail granted in terms of this section.

(7) For all purposes of this Act, but subject to the provisions of this section, bail granted in terms of this section shall be regarded as bail granted by a court in terms of section 60.

(Section 59A inserted by section 3 of Act 85 of 1997)

60. Bail application of accused in court

(1)

(a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit.

(Section 60(1)(a) substituted by section 9(a) of Act 62 of 2000)

(b) Subject to the provisions of section 50(6)(c), the court referring an accused to any other court for trial or sentencing retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.

(Section 60(1)(b) substituted by section 4(a) of Act 85 of 1997)
(Section 60(1)(b) substituted by section 5(a) of Act 34 of 1998)

(c) If the question of the possible release of the accused on bail is not raised by the accused or the prosecutor, the court shall ascertain from the accused whether he or she wishes that question to be considered by the court.

(2) In bail proceedings the court –

(a) may postpone any such proceedings as contemplated in section 50(6);

(b) may, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;

(c) may, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced;

(d) shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (11)(a) and (b), require of the prosecutor to place on record the reasons for not opposing the bail application.

(Section 60(2) substituted by section 4(b) of Act 85 of 1997)

(2A) The court must, before reaching a decision on the bail application, take into consideration any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available.

(Section 60(2A) inserted by section 4 of Act 55 of 2003)

(2B)

(a) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), and if the payment of a sum of money is to be considered as a condition of bail, the court must hold a separate inquiry into the ability of the accused to pay the sum of money being considered or any other appropriate sum.

(b) If, after an inquiry referred to in paragraph (a), it is found that the accused is-

(i) unable to pay any sum of money, the court must consider setting appropriate conditions that do not include an amount of money for the release of the accused on bail or must consider the release of the accused in terms of a guarantee as provided for in subsection (13)(b);or

(ii) able to pay a sum of money, the court must consider setting conditions for the release of the accused on bail and a sum of money which is appropriate in the circumstances.

(Section 60(2B) inserted by section 9(a) of Act 66 of 2008)

(3) If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the presiding officer shall order that such information or evidence be placed before the court.

(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

(Words preceding section 60(4)(a) substituted by section 9(b) of Act 62 of 2000)

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence; or

(Section 60(4)(a) substituted by section 4(c) of Act 85 of 1997)

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system.

(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security; or

(Section 60(4)(e) added by section 4(d) of Act 85 of 1997)

(5) In considering whether the ground in subsection (4)(a) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the degree of violence towards others implicit in the charge against the accused;

(b) any threat of violence which the accused may have made to any person;

(c) any resentment the accused is alleged to harbour against any person;

(d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;

(e) any disposition of the accused to commit offences referred to it Schedule 1, as is evident from his or her past conduct;

(f) the prevalence of a particular type of offence;

(g) any evidence that the accused previously committed an offence referred to in Schedule 1 while released on bail; or

(h) any other factor which in the opinion of the court should be taken into account.

(6) In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;

(b) the assets held by the accused and where such assets are situated;

(c) the means, and travel documents held by the accused, which may enable him or her to leave the country;

(d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial;

(f) the nature and the gravity of the charge on which the accused is to be tried;

(g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or

(j) any other factor which in the opinion of the court should be taken into account.

(7) In considering whether the ground in subsection (4)(c) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify;

(c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(f) whether the accused has access to evidentiary material which is to be presented at his or her trial;

(g) the ease with which evidentiary material could be concealed or destroyed; or

(h) any other factor which in the opinion of the court should be taken into account.

(8) In considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;

(b) whether the accused is in custody on another charge or whether the accused is on parole;

(c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or

(d) any other factor which in the opinion of the court should be taken into account.

(8A) In considering whether the ground in subsection (4)(e) has been established, the court may, where applicable, take into account the following factors, namely-

(a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;

(b) whether the shock or outrage of the community might lead to public disorder if the accused is released;

(c) whether the safety of the accused might be jeopardized by his or her release;

(d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;

(e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or

(f) any other factor which in the opinion of the court should be taken into account.

(Section 60(8A) inserted by section 4(e) of Act 85 of 1997)

(9) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely-

(a) the period for which the accused has already been in custody since his or her arrest;

(b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(d) any financial loss which the accused may suffer owing to his or her detention;

(e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;

(f) the state of health of the accused; or

(g) any other factor which in the opinion of the court should be taken into account.

(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice.

(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to-

(a) in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;

(b) in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.

(Section 60(11) substituted by section 4(f) of Act 85 of 1997)

(11A)

(a) If the attorney-general intends charging any person with an offence referred to in Schedule 5 or 6 the attorney-general may, irrespective of what charge is noted on the charge sheet, at any

time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.

(b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.

(c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by an attorney-general under paragraph (a) shall, upon its mere production at such application or proceedings, be prima facie proof of the charge to be brought against that person.

(Section 60(11A) inserted by section 4(g) of Act 85 of 1997)

(11B)

(a) In bail proceedings the accused, or his or her legal adviser, is compelled to inform the court whether-

(i) the accused has previously been convicted of any offence; and

(ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges.

(b) Where the legal adviser of an accused on behalf of the accused submits the information contemplated in paragraph (a), whether in writing or orally, the accused shall be required by the court to declare whether he or she confirms such information or not.

(c) The record of the bail proceedings, excluding the information in paragraph (a), shall form part of the record of the trial of the accused following upon such bail proceedings: Provided that if the accused elects to testify during the course of the bail proceedings the court must inform him or her of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.

(d) An accused who wilfully-

(i) fails or refuses to comply with the provisions of paragraph (a); or

(ii) furnishes the court with false information required in terms of paragraph (a),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(Section 60(11A) inserted by section 4(g) of Act 85 of 1997)

(12) The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice.

(13) The court releasing an accused on bail in terms of this section, may order that the accused-

(a) deposit with the clerk of any magistrate's court or the registrar of any High Court, as the case may be, or with a correctional official at the prison where the accused is in custody or with a police official at the place where the accused is in custody, the sum of money determined by the court in question; or

(b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 63(1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.

(Section 60(13) substituted by section 9(b) of Act 66 of 2008)

(14) Notwithstanding anything to the contrary contained in any law, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in or forms part of a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the prosecutor otherwise directs: Provided that this subsection shall not be construed as denying an accused access to any information, record or document to which he or she may be entitled for purposes of his or her trial.

(Section 60(14) added by section 4(h) of Act 85 of 1997)
(Section 60(14) amended by section 5(b) of Act 34 of 1998)

(Section 60 amended by section 2 of Act 56 of 1979)
(Section 60 amended by section 2 of Act 64 of 1982)
(Section 60 substituted by section 3 of Act 75 of 1995)

61. …….

(Section 61 repealed by section 4 of Act 75 of 1995)

62. Court may add further conditions of bail

Any court before which a charge is pending in respect of which bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail –

(a) with regard to the reporting in person by the accused at any specified time and place to any specified person or authority;

(b) with regard to any place to which the accused is forbidden to go;

(c) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;

(d) with regard to the place at which any document may be served on him under this Act;

(e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused.

(f) which provides that the accused shall be placed under the supervision of a probation officer or a correctional official.

(Section 62(f) added by section 38 of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg; with effect from 1 August 1992 in the Magisterial Districts of Adelaide, Albany, Alexandria, Barkly West, Bathurst, Bedford, Bloemfontein, Boshof, Bothaville, Botshabelo, Brandfort, Caledon, Calitzdorp, Camperdown, Ceres, Chatsworth, Durban, East London, Fort Beaufort, George, Groblersdal, Hankey, Hennenman, Herbert, Humansdorp, Inanda, Jacobsdal, Kimberley, King William's Town, Kirkwood, Klerksdorp, Knysna, Komga, Koppies, Kroonstad, Ladismith (C), Laingsburg, Lindley, Lydenburg, Malmesbury, Middelburg (T), Montagu, Mossel Bay, Moutse, Nelspruit, Oberholzer, Odendaalsrus, Oudtshoorn, Paarl, Parys, Pilgrim's Rest, Petrusburg, Pietermaritzburg, Pinetown, Port Elizabeth, Potchefstroom, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Tulbagh, Uitenhage, Uniondale, Vanderbijlpark, Ventersdorp, Vereeniging, Viljoenskroon, Vredefort, Warrenton, Welkom, Wellington, Witbank, White River and Worcester; with effect from 1 October 1992 in the Magisterial Districts of Alberton, Barberton, Belfast, Benoni, Bergville, Bethal, Bethlehem, Bloemhof, Boksburg, Brakpan, Carolina, Coligny, Cradock, Delmas, Dundee, Eshowe, Estcourt, Frankfort, Germiston, Glencoe, Gordonia, Graaff-Reinet, Harrismith, Heidelberg (T), Heilbron, Highveld Ridge, Hofmeyr, Hoopstad, Jansenville, Johannesburg, Kempton Park, Klip River, Koster, Kranskop, Kriel, Krugersdorp, Letaba, Lichtenburg, Lions River, Lower Tugela, Lower Umfolozi, Marico, Mooi River, Mtonjaneni, Mtunzini, New Hanover, Nigel, Pearston, Pietersburg, Randburg, Roodepoort, Rustenburg, Sasolburg, Senekal, Somerset East, Springs, Steytlerville, Swartruggens, Umvoti, Ventersburg and Wolmaransstad; with effect from 1 November 1992 in the Magisterial Districts of Aberdeen, Clanwilliam, Ellisras, Fouriesburg, Messina, Namakwaland, Potgietersrus, Schweizer-Reneke, Soutpansberg, Standerton, Thabazimbi, Virginia, Vredenburg, Vredendal, Walvis Bay, Waterberg, Waterval-Boven and Wesselsbron; with effect from 1 December 1992 in the Magisterial Districts of Aliwal North, Beaufort West, Cathcart, Clocolan, Edenburg, Ermelo, Ficksburg, Fraserburg, Ladybrand, Port Shepstone, Queenstown, Reddersburg. Reitz, Smithfield, Sterkstroom, Stutterheim, Tarkastad, Umzinto, Wepener, Winburg and Zastron; with effect from 1 February 1993 in the Magisterial Districts of Amersfoort, Barkly East, Bethulie, Britstown, Carnarvon, Colesberg, De Aar, Delareyville, Elliot, Fauresmith, Hanover, Hopetown, Indwe, Kenhardt, Koffiefontein, Kuruman, Maclear, Phalaborwa, Philipstown, Postmasburg, Prieska, Prince Albert, Randfontein, Richmond (C), Trompsburg,

Victoria West, Vryburg, Westonaria and Wodehouse; with effect from 1 April 1993 in the Magisterial Districts of Balfour, Ixopo, Joubertina, Mount Currie, Piet Retief, Richmond (N), Wakkerstroom and Willowmore and with effect from 1 May 1993 in the Magisterial Districts of Bredasdorp, Heidelberg (C), Hermanus, Middelburg (C), Molteno, Newcastle, Paulpietersburg, Riversdale, Steynsburg, Swellendam, Utrecht, Volksrust and Vryheid)

63. Amendment of conditions of bail

(1) Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined under section 59 or 60 or amend or supplement any condition imposed under section 60 or 62, whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application.

(Section 63(1) substituted by section 5 of Act 75 of 1995)

(2) If the court referred to in subsection (1) is a superior court, an application under that subsection may be made to any judge of that court if the court is not sitting at the time of the application.

63A. Release or amendment of bail conditions of accused on account of prison conditions

(1) If a Head of Prison contemplated in the Correctional 2 Services Act, 1998 (Act No. 111 of 1998), is satisfied that the prison population of a particular prison is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused-

(a) who is charged with an offence falling within the category of offences-

(i) for which a police official may grant bail in terms of section 59; or

(ii) referred to in Schedule 7;

(b) who has been granted bail by any lower court in respect of that offence, but is unable to pay the amount of bail concerned; and

(c) who is not also in detention in respect of any other offence falling outside the category of offences referred to in paragraph (a),

that Head of Prison may apply to the said court for the-

(aa) release of the accused on warning in lieu of bail; or

(bb) amendment of the bail conditions imposed by that court on the accused.

(2)

(a) An application contemplated in subsection (1) must be lodged in writing with the clerk of the court, and must-

(i) contain an affidavit or affirmation by the Head of Prison to the effect that he or she is satisfied that the prison population of the prison concerned is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of the accused concerned; and

(ii) contain a written certificate by the Director of Public Prosecutions concerned, or a prosecutor authorised thereto by him or her in writing, to the effect that the prosecuting authority does not oppose the application.

(b) The accused and his or her legal representative, if any, must be notified of an application referred to in subsection (1).

(c) The clerk of the court must, without delay, cause the application to be placed before any magistrate or regional magistrate, as the case may be, who may consider the application in chambers.

(d) The application may be considered in the presence of the accused if the magistrate or regional magistrate deems it necessary.

(3)

(a) If the magistrate or regional magistrate is satisfied that the application complies with the requirements set out in subsection (2)(a), he or she may-

(i) order the release of the accused from custody and, if the accused is present, warn him or her to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and the court may, at the time of such order or at any time thereafter, impose any condition referred to in section 62 in connection with such release; or

(ii) reduce the amount of bail determined under section 60 and, if deemed appropriate, amend or supplement any condition imposed under section 60 or 62.

(b) If the accused is absent when an order referred to in paragraph (a)(i) is made or when bail conditions are amended in terms of paragraph (a)(ii), a correctional official duly authorised by the Head of the prison where the accused is in custody must-

(i) hand to the accused a certified copy of the said order or of the bail conditions as amended and explain to the accused the import thereof; and

(ii) return to the clerk of the court a certificate under the hand of that official and signed by the accused, that he or she has handed the certified copy of such order or conditions to the accused and that he or she has explained to the accused the import thereof,

and the mere production to the court of the said certificate shall be *prima facie* proof that the said certified copy was handed and explained to the accused.

(c) The provisions of section 72(2)(a) apply, with the necessary changes, in respect of an accused released in terms of paragraph (a)(i).

(4)

(a) The National Director of Public Prosecutions may, in consultation with the Commissioner of Correctional Services, issue directives regarding-

(i) the establishment of monitoring and consultative mechanisms for bringing an application contemplated in subsection (1); and

(ii) the procedure to be followed by a Head of Prison and a Director of Public Prosecutions whenever it appears that it is necessary to bring an application contemplated in subsection (1).

(b) Any directives issued in terms of paragraph (a) must be submitted to Parliament before they take effect.

(Section 63A inserted by section 6 of Act 42 of 2001)

64. Proceedings with regard-to bail and conditions to be recorded in full

The court dealing with bail proceedings as contemplated in section 50(6) or which considers bail under section 60 or which imposes any further condition under section 62 or which, under section 63 or 63A, amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof, or shall cause such proceedings to be recorded in full, and where such court is a magistrate's court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such conditions or any amendment or supplementation thereof.

(Section 64 substituted by section 6 of Act 75 of 1995)

(Section 64 substituted by section 5 of Act 85 of 1997)

(Section 64 substituted by section 7 of Act 42 of 2001)

65. Appeal to superior court with regard to bail

(1)

(a) An accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.

(b) The appeal may be heard by a single judge.

(c) A local division of the Supreme Court shall have jurisdiction to hear an appeal under paragraph (a) if the area of jurisdiction of the lower court in question or any part thereof falls within the area of jurisdiction of such local division.

(2) An appeal shall not lie in respect of new facts which arise or are discovered after the decision against which the appeal is brought, unless such new facts are first placed before the magistrate or regional magistrate against whose decision the appeal is brought and such magistrate or regional magistrate gives a decision against the accused on such new facts.

(3) The accused shall serve a copy of the notice of appeal on the attorney-general and on the magistrate or, as the case may be, the regional magistrate, and the magistrate or regional magistrate shall forthwith furnish the reasons for his decision to the court or judge, as the case may be.

(4) The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.

65A. Appeal by attorney-general against decision of court to release accused on bail

(1)

(a) The attorney-general may appeal to the superior court having jurisdiction, against the decision of' a lower court to release an accused on bail or against the imposition of a condition of bail as contemplated in section 65(1)(a).

(b) The provisions of section 310A in respect of an application or appeal referred to in that section by an attorney-general, and the provisions of section 65(1)(b) and (c) and (2), (3) and (4) in respect of an appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of paragraph (a) of this subsection.

(2)

(a) The attorney-general may appeal to the Appellate Division against a decision of a superior court to release an accused on bail.

(b) The provisions of section 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of paragraph (a) of this subsection.

(c) Upon an appeal in terms of paragraph (a) or an application referred to in paragraph (b) brought by an attorney-general, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.

(3) If the appeal of the attorney-general in terms of subsection (1)(a) or (2)(a) is successful, the court hearing the appeal shall issue a warrant for the arrest of the accused.

(Section 65A inserted by section 7 of Act 75 of 1995)

66. Failure by accused to observe condition of bail

(1) If an accused is released on bail subject to any condition imposed under section 60 or 62, including any amendment or supplementation under section 63 of a condition of bail, and the prosecutor applies to the court before which the charge with regard to which the accused has been released on bail is pending, to lead evidence to prove that the accused has failed to comply with such condition, the court shall, if the accused is present and denies that he or she failed to comply with such condition or that his or her failure to comply with such condition was due to fault on his or her part, proceed to hear such evidence as the prosecutor and the accused may place before it.

(Section 66(1) substituted by section 8 of Act 75 of 1995)

(2) If the accused is not present when the prosecutor applies to the court under subsection (1), the court may issue a warrant for the arrest of the accused, and shall, when the accused appears before the court and denies that he failed to comply with the condition in question or that his failure to comply with such condition was due to fault on his part, proceed to hear such evidence as the prosecutor and the accused may place before it.

(3) If the accused admits that he failed to comply with the condition in question or if the court finds that he failed to comply with such condition, the court may, if it finds that the failure by the accused was due to fault on his part, cancel the bail and declare the bail money forfeited to the State.

(4) The proceedings and the evidence under this section shall be recorded.

67. Failure of accused on bail to appear

(1) If an accused who is released on bail –

(a) fails to appear at the place and on the date and at the time –

(i) appointed for his trial; or

(ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or

(b) fails to remain in attendance at such trial or at such proceedings,

the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State, and issue a warrant for the arrest of the accused.

(2)

(a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or to remain in attendance was not due to fault on his part.

(b) If the accused satisfies the court that his failure was not due to fault on his part, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall lapse.

(c) If the accused does not appear before court within fourteen days of the issue under subsection (1) of the warrant of arrest or within such extended period as the court may on good cause determine, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall become final.

(3) The court may receive such evidence as it may consider necessary to satisfy itself that the accused has under subsection (1) failed to appear or failed to remain in attendance, and such evidence shall be recorded.

67A. Criminal liability of a person who is on bail on the ground of failure to appear or to comply with a condition of bail

Any person who has been released on bail and who fails, without good cause to appear on the date and at the place determined for his or her appearance, or to remain in attendance until the proceeding in which he or she must appear have been disposed of, or who fails without good cause to comply with a condition of bail imposed by the court in terms of section 60 or 62, including an amendment or supplementation thereof in terms of section 63, shall be guilty of an offence and shall on conviction be liable to a fine or to imprisonment not exceeding one year.

(Section 67A inserted by section 9 of Act 75 of 1995)

68. Cancellation of bail

(1) Any court before which a charge is pending in respect of which bail has been granted may, whether the accused has been released or not, upon information on oath that-

(a) the accused is about to evade justice or is about to abscond in order to evade justice;

(b) the accused has interfered or threatened or attempted to interfere with witnesses;

(c) the accused has defeated or attempted to defeat the ends of justice;

(d) the accused poses a threat to the safety of the public or of a particular person;

(e) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;

(f) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or

(g) it is in the interests of justice to do so,

issue a warrant for the arrest of the accused and make such order as it may deem proper, including an order that the bail be cancelled and that the accused be committed to prison until the conclusion of the relevant criminal proceedings.

(2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that-

(a) he or she has reason to believe that-

(i) an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice;

(ii) the accused has interfered or threatened or attempted to interfere with witnesses;

(iii) the accused has defeated or attempted to defeat the ends of justice; or

(iv) the accused poses a threat to the safety of the public or of a particular person;

(b) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;

(c) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to release the accused on bail; or

(d) it is in the interests of justice to do so,

issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison, which committal shall remain of force until the conclusion of the relevant criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.

(Section 68 substituted by section 10 of Act 75 of 1995)

(Section 68 substituted by section 6 of Act 85 of 1997)

68A. Cancellation of bail at request of accused

Any court before which a charge is pending in respect of which the accused has been released on bail may, upon application by the accused, cancel the bail and refund the bail money if the accused is in custody on any other charge or is serving a sentence.

(Section 68A inserted by section 15 of Act 59 of 1983)

69. Payment of bail money by third person

(1) No provision of section 59 or 60 shall prevent the payment by any person, other than the accused, of bail money for the benefit of the accused

(2) Bail money, whether deposited by an accused or any other person for the benefit of the accused, shall, notwithstanding that such bail money or any part thereof may have been ceded to any person, be refunded only to the accused or the depositor, as the case may be.

(3) No person shall be allowed to deposit for the benefit of an accused any bail money in terms of this section if the official concerned has reason to believe that such person, at any time before or after depositing such bail money, has been indemnified or will be indemnified by any person in any manner against loss of such bail money or that he has received or will receive any financial benefit in connection with the deposit of such bail money.

70. Remission of bail money

The Minister or any officer acting under his or her authority or the court concerned may remit the whole or any part of any bail money forfeited under section 66 or 67.

(Section 70 substituted by section 11 of Act 75 of 1995)

71. …….

(Section 71 substituted by section 4 of Act 26 of 1987)

(Section 71 substituted by section 39 of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg and with effect from 1 February 1993 in respect of the remainder of the Magisterial Districts)

(Section 71 repealed by section 99(1) of Act 75 of 2008)

CHAPTER 10
RELEASE ON WARNING

72. Accused may be released on warning in lieu of bail

(1) Subject to section 4(2) of the Child Justice Act, 2008, if an accused who is eighteen years or older is in custody in respect of any offence and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II or Part III of Schedule 2 -–

(Words preceding section 72(1)(a) substituted by section 5 of Act 26 of 1987)

(Words preceding section 72(1)(a) substituted by section 2 of Act 126 of 1992)

(Words preceding section 72(1)(a) substituted by section 99(1) of Act 75 of 2008)

(a) release the accused from custody and warn him to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and the said court may, at the time of such release or at any time thereafter, impose any condition referred to in section 62 in connection with such release;

(Section 72(1)(a) substituted by section 7(a) of Act 33 of 1986)

(b) …….

(Section 72(1)(b) substituted by section 7(b) of Act 33 of 1986)

(Section 72(1)(b) deleted by section 99(1) of Act 75 of 2008)

(2)

(a) An accused who is released under subsection (1)(a) and who fails to appear or, as the case may be, to remain in attendance at the proceedings in accordance with a warning under that paragraph, or who fails to comply with a condition imposed under subsection (1)(a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).

(b) …….

(Section 72(2)(b) deleted by section 99(1) of Act 75 of 2008)

(Section 72(2) substituted by section 7(c) of Act 33 of 1986)

(3)

(a) A police official who releases an accused under subsection (1)(a) shall, at the time of releasing the accused, complete and hand to the accused and, in the case of subsection (1)(b), to the person in whose custody the accused is, a written notice on which shall be entered the offence in respect of which the accused is being released and the court before which and the time at which and the date on which the accused shall appear.

(b) A court which releases an accused under subsection (1) shall, at the time of releasing the accused, record or cause the relevant proceedings to be recorded in full, and where such court is a magistrate's court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court which sets out the warning relating to the court before which, the time at which and the date on which the accused is to appear, or the conditions on which he was released, shall, on its mere production in any court in which the relevant charge is pending be *prima facie* proof of such warning.

(Section 72(3)(b) substituted by section 7(d) of Act 33 of 1986)

(4) The court may, if satisfied that an accused referred to in subsection (2)(a) or a person referred to in subsection (2)(b), was duly warned in terms of paragraph (a) or, as the case may be, paragraph (b) of subsection (1), and that such accused or such person has failed to comply with such warning or to comply with a condition imposed, issue a warrant for his arrest, and may, when he is brought before the court, in a summary manner enquire into his failure and, unless such accused or such person satisfies the court that his failure was not due to fault on his part, sentence him to a fine not exceeding R300 or to imprisonment for a period not exceeding three months

(Section 72(4) substituted by section 7(e) of Act 33 of 1986)

72A. Cancellation of release on warning

Notwithstanding the provisions of section 72(4), the provisions of section 68(1) and (2) in respect of an accused who has been granted bail, are, with the necessary changes, applicable in respect of an accused who has been released on warning.

(Section 72A inserted by section 7 of Act 85 of 1997)

CHAPTER 11
ASSISTANCE TO ACCUSED

73. Accused entitled to assistance after arrest and at criminal proceedings

(1) An accused who is arrested, whether with or without warrant, shall, subject to any law relating to the management of prisons, be entitled to the assistance of his legal adviser as from the time of his arrest.

(2) An accused shall be entitled to be represented by his legal adviser at criminal proceedings, if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.

(2A) Every accused shall-

(a) at the time of his or her arrest;

(b) when he or she is served with a summons in terms of section 54;

(c) when a written notice is handed to him or her in terms of section 56;

(d) when an indictment is served on him or her in terms of section 144(4)(a);

(e) at his or her first appearance in court,

be informed of his or her right to be represented at his or her own expense by a legal adviser of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance.

(Section 73(2A) inserted by section 2 of Act 86 of 1996)

(2B) Every accused shall be given a reasonable opportunity to obtain legal assistance.

(Section 73(2B) inserted by section 2 of Act 86 of 1996)

(2C) If an accused refuses or fails to appoint a legal adviser of his or her own choice within a reasonable time and his or her failure to do so is due to his or her own fault, the court may, in addition to any order which it may make in terms of section 342A, order that the trial proceed without legal representation unless the court is of the opinion that that would result in substantial injustice, in which event the court may, subject to the Legal Aid Act, 1969 (Act No. 22 of 1969), order that a legal adviser be assigned to the accused at the expense of the State: Provided that the court may order that the costs of such representation be recovered from the accused: Provided further that the accused shall not be compelled to appoint a legal adviser if he or she prefers to conduct his or her own defence.

(Section 73(2C) inserted by section 2 of Act 86 of 1996)

(3) In addition to the provisions of sections 3(g), 38(2), 44(1)(b) and 65 of the Child Justice Act, 2008 (Act No. 75 of 2008), relating to the assistance of an accused who is under the age of eighteen years by his or her parent, an appropriate adult or a guardian at criminal proceedings, any accused who, in the opinion of the court, requires the assistance of another person at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings.

(Section 73(3) substituted by section 99(1) of Act 75 of 2008)

(Section 73(3) substituted by section 5 of Act 42 of 2013)

74. …….

(Section 74 amended by section 8 of Act 33 of 1986)

(Section 74 repealed by section 99(1) of Act 75 of 2008)

CHAPTER 12
SUMMARY TRIAL

75. Summary trial and court of trial

(1) When an accused is to be tried in a court in respect of an offence, he shall, subject to the provisions of sections 119, 122A and 123, be tried at a summary trial in

(a) a court which has jurisdiction and in which he appeared for the first time in respect of such offence in accordance with any method referred to in section 38;

(b) a court which has jurisdiction and to which he was referred to under subsection (2); or

(c) any other court which has jurisdiction and which has been designated by the attorney-general or any person authorized thereto by the attorney-general, whether in general or in any particular case, for the purpose of such summary trial.

(Section 75(1)(c) substituted by section 9 of Act 33 of 1986)

(2)

(a) If an accused appears in a court which does not have jurisdiction to try the case, the accused shall at the request of the prosecutor be referred to a court having jurisdiction.

(Section 75(2) renumbered to 75(2)(a) by section 3 of Act 86 of 1996)

(b) If an accused appears in a magistrate's court and the prosecutor informs the court that he or she is of the opinion that the alleged offence is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court but not of the jurisdiction of a regional court, the court shall if so requested by the prosecutor refer the accused to the regional court for summary trial without the accused having to plead to the relevant charge.

(Section 75(2)(b) added by section 3 of Act 86 of 1996)

(3) The court before whom an accused appears for the purposes of a bail application shall, at the conclusion of the bail proceedings or at any stage thereafter, but before the accused has pleaded, refer such accused to a court designated by the prosecutor for purposes of trial.

(Section 75(3) added by section 7 of Act 85 of 1997)

(Section 75 substituted by section 3 of Act 56 of 1979)

76. Charge-sheet and proof of record of criminal case

(1) Unless an accused has been summoned to appear before the court, the proceedings at a summary trial in a lower court shall be commenced by lodging a charge-sheet with the clerk of the court, and, in the case of a superior court, by serving an indictment referred to in section 144 on the accused and the lodging thereof with the registrar of the court concerned.

(2) The charge-sheet shall in addition to the charge against the accused include the name and, where known and where applicable, the address and description of the accused with regard to sex, nationality and age.

(Section 76(2) substituted by section 13 of Act 139 of 1992)

(3)

(a) The court shall keep a record of the proceedings, whether in writing or mechanical, or shall cause such record to be kept, and the charge-sheet, summons or indictment shall form part thereof.

(b) Such record may be proved in a court by the mere production thereof or of a copy thereof in terms of section 235.

(c) Where the correctness of any such record is challenged, the court in which the record is challenged may, in order to satisfy itself whether any matter was correctly recorded or not, either orally or on affidavit hear such evidence as it may deem necessary.

CHAPTER 13
ACCUSED: CAPACITY TO UNDERSTAND PROCEEDINGS: MENTAL ILLNESS AND CRIMINAL RESPONSIBILITY

77. Capacity of accused to understand proceedings

(1) If it appears to the court at any stage of criminal proceedings that the accused is by reason of mental illness or mental defect not capable of understanding the proceedings so as to make a proper defence, the court shall direct that the matter be enquired into and be reported on in accordance with the provisions of section 79.

(1A) At proceedings in terms of sections 77(1) and 78(2) the court may, if it is of the opinion that substantial injustice would otherwise result, order that the accused be provided with the services of a legal practitioner in terms of section 3B of the Legal Aid Amendment Act, 1996 (Act No. 20 of 1996).

(Section 77(1A) inserted by section 3(a) of Act 68 of 1998)

(2) If the finding contained in the relevant report is the unanimous finding of the persons who under section 79 enquired into the mental condition of the accused and the finding is not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.

(3) If the said finding is not unanimous or, if unanimous, is disputed by the prosecutor or the accused, the court shall determine the matter after hearing evidence, and the prosecutor and the accused may to that end present evidence to the court, including the evidence of any person who under section 79 enquired into the mental condition of the accused.

(4) Where the said finding is disputed, the party disputing the finding may subpoena and cross-examine any person who under section 79 has enquired into the mental condition of the accused.

(5) If the court finds that the accused is capable of understanding the proceedings so as to make a proper defence, the proceedings shall be continued in the ordinary way.

(6)

(a) If the court which has jurisdiction in terms of section 75 to try the case, finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court may, if it is of the opinion that it is in the interests of the accused, taking into account the nature of the accused's incapacity contemplated in subsection (1), and unless it can be proved on a balance of probabilities that, on the limited evidence available the accused committed the act in question, order that such information or evidence be placed before the court as it deems fit so as to determine whether the accused has committed the act in question and the court shall direct that the accused-

(i) in the case of a charge of murder or culpable homicide or rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or a charge involving serious violence or if the court considers it to be necessary in the public interest, where the court finds that the accused has committed the act in question, or any other offence involving serious violence, be detained in a psychiatric hospital or a prison pending the decision of a judge in chambers in terms of section 47 of the Mental Health Care Act, 2002; or

(ii) where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence-

(aa) be admitted to and detained in an institution stated in the order as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002,

and if the court so directs after the accused has pleaded to the charge, the accused shall not be entitled under section 106(4) to be acquitted or to be convicted in respect of the charge in question.

(b) If the court makes a finding in terms of paragraph (a) after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside, and if the accused has pleaded guilty it shall be deemed that he has pleaded not guilty.

(Section 77(6) substituted by section 10 of Act 33 of 1986)
(Section 77(6) amended by section 9 of Act 51 of 1991)
(Section 77(6) amended by section 42(a) of Act 129 of 1993)
(Section 77(6) amended by section 3(b) of Act 68 of 1998)
(Section 77(6) amended by section 12 of Act 55 of 2002)
(Section 77(6) substituted by section 68 of Act 32 of 2007)

(7) Where a direction is issued in terms of subsection (6) or (9), the accused may at any time thereafter, when he is capable of understanding the proceedings so as to make a proper defence, be prosecuted and tried for the offence in question.

(Section 77(7) amended by section 9 of Act 51 of 1991)
(Section 77(7) substituted by section 42(b) of Act 129 of 1993)
(Section 77(7) substituted by section 3(c) of Act 68 of 1998)

(8)

(a) An accused against whom a finding is made –

(i) under subsection (5) and who is convicted;

(ii) under subsection (6) and against whom the finding is not made in consequence of an allegation by the accused under subsection (1),

may appeal against such finding.

(b) Such an appeal shall be made in the same manner and subject to the same conditions as an appeal against a conviction by the court for an offence.

(9) Where an appeal against a finding in terms of subsection (5) is allowed, the court of appeal shall set aside the conviction and sentence and direct that the person concerned be detained in accordance with the provisions of subsection (6).

(Section 77(9) amended by section 9 of Act 51 of 1991)

(Section 77(9) substituted by section 42(c) of Act 129 of 1993)

(Section 77(9) substituted by section 3(d) of Act 68 of 1998)

(10) Where an appeal against a finding under subsection (6) is allowed, the court of appeal shall set aside the direction issued under that subsection and remit the case to the court which made the finding, whereupon the relevant proceedings shall be continued in the ordinary way

78. Mental illness or mental defect and criminal responsibility

(1) A person who commits an act or makes an omission which constitutes an offence and who at the time of such commission or omission suffers from a mental illness or mental defect which makes him or her incapable-

(a) of appreciating the wrongfulness of his or her act or omission; or

(b) of acting in accordance with an appreciation of the wrongfulness of his or her act or omission,

shall not be criminally responsible for such act or omission.

(Section 78(1) substituted by section 5(a) of Act 68 of 1998)

(1A) Every person is presumed not to suffer from a mental illness or mental defect so as not to be criminally responsible in terms of section 78(1), until the contrary is proved on a balance of probabilities.

(Section 78(1A) inserted by section 5(b) of Act 68 of 1998)

(1B) 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.

(Section 78(1B) inserted by section 5(b) of Act 68 of 1998)

(2) If it is alleged at criminal proceedings that the accused is by reason of mental illness or mental defect or for any other reason not criminally responsible for the offence charged, or if it appears to the court at criminal proceedings that the accused might for such a reason not be so responsible, the court shall in the case of an allegation or appearance of mental illness or mental defect, and may, in any other case, direct that the matter be enquired into and be reported on in accordance with the provisions of section 79.

(Section 78(2) substituted by section 5(c) of Act 68 of 1998)

(3) If the finding contained in the relevant report is the unanimous finding of the persons who under section 79 enquired into the relevant mental condition of the accused, and the finding is not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.

(4) If the said finding is not unanimous or, if unanimous, is disputed by the prosecutor or the accused, the court shall determine the matter after hearing evidence, and the prosecutor and the accused may to that end present evidence to the court, including the evidence of any person who under section 79 enquired into the mental condition of the accused.

(5) Where the said finding is disputed, the party disputing the finding may subpoena and cross-examine any person who under section 79 enquired into the mental condition of the accused.

(6) 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 illness or intellectual disability not criminally responsible for such act –

(a) the court shall find the accused not guilty, or

(b) if the court so finds after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside and find the accused not guilty,

by reason of mental illness or intellectual disability, as the case may be, and direct –

(i) in a case where the accused is charged with murder or culpable homicide or rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or another charge involving serious violence, or if the court considers it to be necessary in the public interest that the accused be-

(aa) detained in a psychiatric hospital or a prison pending the decision of a judge in chambers in terms of section 47 of the Mental Health Care Act, 2002;

(bb) admitted to and detained in an institution stated in the order and treated as if he or she were an involuntary mental care health user contemplated in section 37 of the Mental Health Care Act, 2002;

(cc) ……

(dd) released subject to such conditions as the court considers appropriate; or

(ee) released unconditionally;

(ii) in any other case than a case contemplated in subparagraph (i), that the accused-

(aa) be admitted to and detained in an institution stated in the order and treated as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002;

(bb) ……

(cc) be released subject to such conditions as the court considers appropriate; or

(dd) be released unconditionally.

(Section 78(6) substituted by section 11 of Act 33 of 1986)
(Section 78(6) amended by section 9 of Act 51 of 1991)
(Section 78(6) amended by section 43 of Act 129 of 1993)
(Section 78(6) substituted by section 5(d) of Act 68 of 1998)
(Section 78(6) substituted by section 13 of Act 55 of 2002)
(Section 77(6) substituted by section 68 of Act 32 of 2007)

(7) If the court finds that the accused at the time of the commission of the act in question was criminally responsible for the act but that his capacity to appreciate the wrongfulness of the act or to act in accordance with an appreciation of the wrongfulness of the act was diminished by reason of mental illness or mental defect, the court may take the fact of such diminished responsibility into account when sentencing the accused.

(8)

(a) An accused against whom a finding is made under subsection (6) may appeal against such finding if the finding is not made in consequence of an allegation by the accused under subsection (2).

(b) Such an appeal shall be made in the same manner and subject to the same conditions as an· appeal against a conviction by \he court for an offence.

(9) Where an appeal against a finding under subsection (6) is allowed, the court of appeal shall set aside the finding and the direction under that subsection and remit the case to the court which made the finding, whereupon the relevant proceedings shall be continued in the ordinary course.

79. Panel for purposes of enquiry and report under sections 77 and 78

(1) Where a court issues a direction under section 77(1) or 78(2), the relevant enquiry shall be conducted and be reported on-

(a) where the accused is charged with an offence other than one referred to in paragraph (b), by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by the medical superintendent at the request of the court; or

(b) where the accused is charged with murder or culpable homicide or rape or compelled rape as provided for in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or another charge involving serious violence, or if the court considers it to be necessary in the public interest, or where the court in any particular case so directs-

(i) by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by the medical superintendent at the request of the court;

(ii) by a psychiatrist appointed by the court and who is not in the full-time service of the State unless the court directs otherwise, upon application of the prosecutor, in accordance with directives issued under subsection (13) by the National Director of Public Prosecutions;

(iii) by a psychiatrist appointed for the accused by the court; and

(iv) by a clinical psychologist where the court so directs.

(Section 79(1) amended by section 44 of Act 129 of 1993)
(Section 79(1) amended by section 28 of Act 105 of 1997)
(Section 79(1) substituted by section 6(a) of Act 68 of 1998)
(Section 79(1) substituted by section 68 of Act 32 of 2007)
(Section 79(1) substituted by section 10(a) of Act 66 of 2008)

(1A) The prosecutor undertaking the prosecution of the accused or any other prosecutor attached to the same court shall provide the persons who, in terms of subsection (1), have to conduct the enquiry and report on the accused's mental capacity with a report in which the following are stated, namely-

(a) whether the referral is taking place in terms of section 77 or 78;

(b) at whose request or on whose initiative the referral is taking place;

(c) the nature of the charge against the accused;

(d) the stage of the proceedings at which the referral took place;

(e) the purport of any statement made by the accused before or during the court proceedings that is relevant with regard to his or her mental condition or mental capacity;

(f) the purport of evidence that has been given that is relevant to the accused's mental condition or mental capacity;

(g) in so far as it is within the knowledge of the prosecutor, the accused's social background and family composition and the names and addresses of his or her near relatives; and

(h) 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.

(Section 79(1A) inserted by section 6(b) of Act 68 of 1998)

(2)

(a) The court may for the purposes of the relevant enquiry commit the accused to a psychiatric hospital or to any other place designated by the court, for such periods, not exceeding thirty days at a time, as the court may from time to time determine, and where an accused is in custody when he is so committed, he shall, while he is so committed, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such committal.

(Section 79(2) renumbered to 79(2)(a) by section 4 of Act 4 of 1992)

(b) When the period of committal is for the first time extended under paragraph (a), such extension may be granted in the absence of the accused unless the accused or his legal representative requests otherwise.

(Section 79(2)(b) added by section 4 of Act 4 of 1992)

(c) The court may make the following orders after the enquiry referred to in subsection (1) has been conducted-

(i) postpone the case for such periods referred to in paragraph (a), as the court may from time to time determine;

(ii) refer the accused at the request of the prosecutor to the court referred to in section 77(6) which has jurisdiction to try the case;

(iii) make any other order it deems fit regarding the custody of the accused; or

(iv) any other order.

(Section 79(2)(c) added by section 6(c) of Act 68 of 1998)

(Section 79(2) amended by section 44 of Act 129 of 1993)

(3) The relevant report shall be in writing and shall be submitted in triplicate to the registrar or, as the case may be, the clerk of the court in question, who shall make a copy thereof available to the prosecutor and the accused.

(4) The report shall –

(a) include a description of the nature of the enquiry; and

(b) include a diagnosis of the mental condition of the accused; and

(c) if the enquiry is under section 77(1), include a finding as to whether the accused is capable of understanding the proceedings in question so as to make a proper defence; or

(d) if the enquiry is in terms of section 78(2), include a finding as to the extent to which the capacity of the accused to appreciate the wrongfulness of the act in question or to act in accordance with an appreciation of the wrongfulness of that act was, at the time of the commission thereof, affected by mental illness or mental defect or by any other cause.

(Section 79(4)(d) substituted by section 6(d) of Act 68 of 1998)

(5) If the persons conducting the relevant enquiry are not unanimous in their finding under paragraph (c) or (d) of subsection (4), such fact shall be mentioned in the report and each of such persons shall give his finding on the matter in question.

(6) Subject to the provisions of subsection (7), the contents of the report shall be admissible in evidence at criminal proceedings.

(7) A statement made by an accused at the relevant enquiry shall not be admissible in evidence against the accused at criminal proceedings, except to the extent to which it may be relevant to the determination of the mental condition of the accused, in which event such statement shall be admissible notwithstanding that it may otherwise be inadmissible.

(8) A psychiatrist and a clinical psychologist appointed under subsection (1), other than a psychiatrist and a clinical psychologist appointed for the accused, shall, subject to the provisions of subsection (10), be appointed from the list of psychiatrists and clinical psychologists referred to in subsection (9)(a).

(Section 79(8) substituted by section 8(a) of Act 42 of 2001)

(9) The Director-General: Health shall compile and keep a list of –

(a) psychiatrists and clinical psychologists who are prepared to conduct any enquiry under this section; and

(b) psychiatrists who are prepared to conduct any enquiry under section 286A(3),

and shall provide the registrars of the High Courts and all clerks of magistrates' courts with a copy thereof.

(Section 79(9) substituted by section 17 of Act 116 of 1993)

(Section 79(9) substituted by section 8(b) of Act 42 of 2001)

(10) Where the list compiled and kept under subsection (9)(a) does not include a sufficient number of psychiatrists and clinical psychologists who may conveniently be appointed for any enquiry under this section, a psychiatrist and clinical psychologist may be appointed for the purposes of such enquiry notwithstanding that his or her name does not appear on such list.

(Section 79(10) substituted by section 8(c) of Act 42 of 2001)

(11)

(a) A psychiatrist or clinical psychologist designated or appointed under subsection (1) by or at the request of the court to enquire into the mental condition of an accused and who is not in the full-time service of the State, shall be compensated for his or her services in connection with the enquiry from public funds in accordance with a tariff determined by the Minister in consultation with the Minister of Finance.

(b) A psychiatrist appointed under subsection (1)(b)(iii) for the accused to enquire into the mental condition of the accused and who is not in the full-time service of the State, shall be compensated for his or her services from public funds in the circumstances and in accordance with a tariff determined by the Minister in consultation with the Minister of Finance.

(Section 79(11) substituted by section 8(d) of Act 42 of 2001)

(12) For the purposes of this section a psychiatrist or a clinical psychologist means a person registered as a psychiatrist or a clinical psychologist under the Health Professions Act, 1974 (Act 56 of 1974).

(Section 79(12) substituted by section 8(e) of Act 42 of 2001)

(13)

(a) The National Director of Public Prosecutions must, in consultation with the Minister, issue directives regarding the cases and circumstances in which a prosecutor must apply to the court for the appointment of a psychiatrist as provided for in subsection (1)(b)(ii) and any directive so issued must be observed in the application of this section.

(b) The directives referred to in paragraph (a) must ensure that adequate disciplinary steps will be taken against a prosecutor who fails to comply with any directive.

(c) The Minister must submit any directives issued under this subsection to Parliament before those directives take effect, and the first directives so issued, must be submitted to Parliament within four months of the commencement of this subsection.

(d) Any directive issued under this subsection may be amended or withdrawn in like manner.

(Section 79(13) added by section 10(b) of Act 66 of 2008)

CHAPTER 14
THE CHARGE

80. Accused may examine charge

An accused may examine the charge at any stage of the relevant criminal proceedings

81. Joinder of charges

(1) Any number of charges may be joined in the same proceedings against an accused at any time before any evidence has been led in respect of any particular charge, and where several charges are so joined, each charge shall be numbered consecutively.

(2)

(a) The court may, if in its opinion it will be in the interests of justice to do so, direct that an accused be tried separately in respect of any charge joined with any other charge.

(b) An order under paragraph (a) may be made before or during a trial, and the effect thereof shall be that the charge in respect of which an accused is not then tried, shall be proceeded with in all respects as if the accused had in respect thereof been charged separately

82. Several charges to be disposed of by same court

Where an accused is in the same proceedings charged with more than one offence, and anyone charge is for any reason to be disposed of by a regional court or a superior court, all the charges shall be disposed of by the same court in the same proceedings.

83. Charge where it is doubtful what offence committed

If by reason of any uncertainty as to the facts which can be proved or if for any other reason it is doubtful which of several offences is constituted by the facts which can be proved, the accused may be charged with the commission of all or any of such offences, and any number of such charges may be tried at once, or the accused may be charged in the alternative with the commission of any number of such offences.

84. Essentials of charge

(1) Subject to the provisions of this Act and of any other law relating to any particular offence, a charge shall set forth the relevant offence in such manner and with such particulars as to the time and place at which the offence is alleged to have been committed and the person, if any, against whom and the property, if any, in respect of which the offence is alleged to have been committed, as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) Where any of the particulars referred to in subsection (1) are unknown to the prosecutor it shall be sufficient to state that fact in the charge.

(3) In criminal proceedings the description of any statutory offence in the words of the law creating the offence, or in similar words, shall be sufficient.

85. Objection to charge

(1) An accused may, before pleading to the charge under section 106, object to the charge on the ground –

(a) that the charge does not comply with the provisions of this Act relating to the essentials of a charge;

(b) that the charge does not set out an essential element of the relevant offence;

(c) that the charge does not disclose an offence;

(d) that the charge does not contain sufficient particulars of any matter alleged in the charge: Provided that such an objection may not be raised to a charge when he is required in terms of section 119 or 122A to plead thereto in the magistrate's court; or

(Section 85(1)(d) amended by section 14 of Act 139 of 1992)

(e) that the accused is not correctly named or described in the charge:

Provided that the accused shall give reasonable notice to the prosecution of his intention to object to the charge and shall state the ground upon which he bases his objection: Provided further that the requirement of such notice may be waived by the attorney-general or the prosecutor, as the case may be, and the court may, on good cause shown, dispense with such notice or adjourn the trial to enable such notice to be given.

(2)

(a) If the court decides that an objection under subsection (1) is well-founded, the court shall make such order relating to the amendment of the charge or the delivery of particulars as it may deem fit.

(b) Where the prosecution fails to comply with an order under paragraph (a), the court may quash the charge.

86. Court may order that charge be amended

(1) Where a charge is defective for the want of any essential averment therein, or where there appears to be any variance between any averment in a charge and the evidence adduced in proof of such averment, or where it appears that words or particulars that ought to have been inserted in the charge

have been omitted therefrom, or where any words or particulars that ought to have been omitted from the charge have been inserted therein, or where there is any other error in the charge, the court may, at any time before judgment, if it considers that the making of the relevant amendment will not prejudice the accused in his defence, order that the charge, whether it discloses an offence or not, be amended, so far as it is necessary, both in that part thereof where the defect, variance, omission, insertion or error occurs and in any other part thereof which it may become necessary to amend.

(2) The amendment may be made on such terms as to an adjournment of the proceedings as the court may deem fit.

(3) Upon the amendment of the charge in accordance with the order of the court, the trial shall proceed at the appointed time upon the amended charge in the same manner and with the same consequences as if it had been originally in its amended form.

(4) The fact that a charge is not amended as provided in this section, shall not, unless the court refuses to allow the amendment, affect the validity of the proceedings thereunder.

87. Court may order delivery of particulars

(1) An accused may at any stage before any evidence in respect of any particular charge has been led, in writing request the prosecution to furnish particulars or further particulars of any matter alleged in that charge, and the court before which a charge is pending may at any time before any evidence in respect of that charge has been led, direct that particulars or further particulars be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the proceedings in order that such particulars may be delivered: Provided that the provisions of this subsection shall not apply at the stage when an accused is required in terms of section 119 or 122A to plead to a charge in the magistrate's court;

(Section 87(1) amended by section 15 of Act 139 of 1992)

(2) The particulars shall be delivered to the accused without charge and shall be entered in the record, and the trial shall proceed as if the charge had been amended in conformity with such particulars.

(3) In determining whether a particular is required or whether a defect in the indictment before a superior court is material to the substantial justice of the case, the court may have regard to the summary of the substantial facts under paragraph (a) of section 144(3) or, as the case may be the record of the preparatory examination.

88. Defect in charge cured by evidence

Where a charge is defective for the want of an averment which is an essential ingredient of the relevant offence, the defect shall, unless brought to the notice of the court before judgment, be cured by evidence at the trial proving the matter which should have been averred.

89. Previous conviction not to be alleged in charge

Except where the fact of a previous conviction is an element of any offence with which an accused is charged, it shall not in any charge be alleged that an accused has previously been convicted of any offence, whether in the Republic or elsewhere.

90. Charge need not specify or negative exception, exemption, proviso, excuse or qualification

In criminal proceedings any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany in the same section the description of the offence in the law creating the offence, may be proved by the accused but need not be specified or negatived in the charge and, if so specified or negatived, need not be proved by the prosecution.

91. Charge need not state manner or means of act

A charge need not set out the manner in which or the means or instrument by which any act was done, unless the manner, means or instrument is an essential element of the relevant offence.

92. Certain omissions or imperfections not to invalidate charge

(1) A charge shall not be held defective –

(a) for want of the averment of any matter which need not be proved;

(b) because any person mentioned in the charge is designated by a name of office or other descriptive appellation instead of by his proper name;

(c) because of an omission, in any case where time is not of the essence of the offence, to state the time at which the offence was committed;

(d) because the offence is stated to have been committed on a day subsequent to the laying of the complaint or the service of the charge or on an impossible day or on a day that never happened;

(e) for want of, or imperfection in, the addition of any accused or any other person;

(f) for want of the statement of the value or price of any matter or thing, or the amount of damage, injury or spoil in any case where the value or price or the amount of damage, injury or spoil is not of the essence of the offence.

(2) If any particular day or period is alleged in any charge to be the day on which or the period during which any act or offence was committed, proof that such act or offence was committed on any other day or during any other period not more than three months before or after the day or period alleged therein shall be taken to support such allegation if time is not of the essence of the offence: Provided that –

(a) proof may be given that the act or offence in question was committed on a day or during a period more than three months before or after the day or period stated in the charge unless it is made to appear to the court before which the proceedings are pending that the accused is likely to be prejudiced thereby in his defence on the merits;

(b) if the court considers that the accused is likely to be prejudiced thereby in his defence on the merits, it shall reject such proof, and the accused shall be deemed not to have pleaded to the charge.

93. Alibi and date of act or offence

If the defence of an accused is an alibi and the court before which the proceedings are pending is of the opinion that the accused may be prejudiced in making such defence if proof is admitted that the act or offence in question was committed on a day or at a time other than the day or time stated in the charge, the court shall reject such proof notwithstanding that the day or time in question is within a period of three months before or after the day or time stated in the charge, whereupon the same consequences shall follow as are mentioned in proviso (b) of section 92(2).

94. Charge may allege commission of offence on divers occasions

Where it is alleged that an accused on divers occasions during any period committed an offence in respect of any particular person, the accused may be charged in one charge with the commission of that offence on divers occasions during a stated period.

95. Rules applicable to particular charges

(1) A charge relating to a testamentary instrument need not allege that the instrument is the property of any person.

(2) A charge relating to anything fixed in a square, street or open place or in a place dedicated to public use or ornament, or relating to anything in a public place or office or taken therefrom, need not allege that the thing in question is the property of any person.

(3) A charge relating to a document which is the evidence of title to land or of an interest in land may describe the document as being the evidence of the title of the person or of one of the persons having

an interest in the land to which the document relates, and shall describe the land or any relevant part thereof in a manner sufficient to identify it.

(4) A charge relating to the theft of anything leased to the accused may describe the thing in question as the property of the person who leased it to the accused.

(5) A charge against a person in the public service for an offence committed in connection with anything which came into his possession by virtue of his employment may describe the thing in question as the property of the State.

(6) A charge relating to anything in the possession or under the control of any public officer may describe the thing in question as being in the lawful possession or under the lawful control of such officer without referring to him by name.

(7) A charge relating to movable or immovable property whereof any body corporate has by law the management, control or custody, may describe the property in question as being under the lawful management or control or in the lawful custody of the body corporate in question.

(8) If it is uncertain to which of two or more persons property in connection with which an offence has been committed belonged at the time when the offence was committed, the relevant charge may describe the property as the property of one or other of those persons, naming each of them but without specifying which of them, and it shall be sufficient at the trial to prove that at the time when the offence was committed the property belonged to one or other of those persons without proving which of them.

(9) If property alleged to have been stolen was not in the physical possession of the owner thereof at the time when the theft was committed but in the physical possession of another person who had the custody thereof on behalf of the owner, it shall be sufficient to allege in a charge for the theft of that property that it was in the lawful custody or under the lawful control of that other person.

(10) A charge relating to theft from any grave need not allege that anything in the grave is the property of any person.

(11) In a charge in which any trade mark or forged trade mark is proposed to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that such trade mark or forged trade mark is a trade mark or forged trade mark.

(12) A charge relating to housebreaking or the entering of any house or premises with intent to commit an offence, whether the charge is brought under the common law or any statute, may state either that the accused intended to commit a specified offence or that the accused intended to commit an offence to the prosecutor unknown.

96. Naming of company, firm or partnership in charge

A reference in a charge to a company, firm or partnership shall be sufficient if the reference is to the name of the company, firm or partnership.

97. Naming of joint owners of property in charge

A reference in a charge to joint owners of property shall be sufficient if the reference is to one specific owner and another owner or, as the case may be, other owners.

98. Charge of murder or culpable homicide sufficient if it alleges fact of killing

It shall be sufficient in a charge of murder to allege that the accused unlawfully and intentionally killed the deceased, and it shall be sufficient in a charge of culpable homicide to allege that the accused unlawfully killed the deceased.

99. Charge relating to document sufficient if it refers to document by name

(1) In any charge relating to the forging, uttering, stealing, destroying or concealing of, or to some other unlawful dealing with any document, it shall be sufficient to describe the document by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile thereof or otherwise describing it or stating its value.

(2) Whenever it is necessary in any case not referred to in subsection (1) to make any allegation in any charge in relation to any document, whether it consists wholly or in part of writing, print or figures, it shall be sufficient to describe the document by any name or designation by which it is usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof, unless the wording of the document is an element of the offence.

101. Charge relating to false evidence

(1) A charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement or the procuring of false evidence or a false statement –

(a) need not set forth the words of the oath or the affirmation or the evidence or the statement, if it sets forth so much of the purport thereof as is material;

(b) need not allege, nor need it be established at the trial, that the false evidence or statement was material to any issue at the relevant proceedings or that it was to the prejudice of any person.

(2) A charge relating to the giving or the procuring or attempted procuring of false evidence need not allege the jurisdiction or state the nature of the authority of the court or tribunal before which or the officer before whom the false evidence was given or was intended or proposed to be given.

102. Charge relating to insolvency

A charge relating to insolvency need not set forth any debt, act of insolvency or adjudication or any other proceeding in any court, or any order made or any warrant or document issued by or under the authority of any court.

103. Charge alleging intent to defraud need not allege or prove such intent in respect of particular person or mention owner of property or set forth details of deceit

In any charge in which it is necessary to allege that the accused performed an act with an intent to defraud, it shall be sufficient to allege and to prove that the accused performed the act with intent to defraud without alleging and proving that it was the intention of the accused to defraud any particular person, and such a charge need not mention the owner of any property involved or set forth the details of any deceit.

104. Reference in charge to objectionable matter not necessary

A charge of printing, publishing, manufacturing, making, or producing blasphemous, seditious, obscene or defamatory matter, or of distributing, displaying, exhibiting, selling or offering or keeping for sale any obscene book, pamphlet, newspaper or other printed or written matter, shall not be open to objection or be deemed insufficient on the ground that it does not set out the words thereof: Provided that the court may order that particulars shall be furnished by the prosecution stating what passages in such book, pamphlet, newspaper, printing or writing are relied upon in support of the charge.

CHAPTER 15
THE PLEA

105. Accused to plead to charge

The charge shall be put to the accused by the prosecutor before the trial of the accused is commenced, and the accused shall, subject to the provisions of sections 77, 85 and 105A, be required by the court forthwith to plead thereto in accordance with section 106.

(Section 105 substituted by section 1 of Act 62 of 2001)

105A. Plea and sentence agreements

(1)

(a) A prosecutor authorised thereto in writing by the National Director of Public Prosecutions and an accused who is legally represented may, before the accused pleads to the charge brought against him or her, negotiate and enter into an agreement in respect of-

(i) a plea of guilty by the accused to the offence charged or to an offence of which he or she may be convicted on the charge; and

(ii) if the accused is convicted of the offence to which he or she has agreed to plead guilty-

(aa) a just sentence to be imposed by the court; or

(bb) the postponement of the passing of sentence in terms of section 297(1)(a); or

(cc) a just sentence to be imposed by the court, of which the operation of the whole or any part thereof is to be suspended in terms of section 297(1)(b); and

(dd) if applicable, an award for compensation as contemplated in section 300.

(b) The prosecutor may enter into an agreement contemplated in paragraph (a)-

(i) after consultation with the person charged with the investigation of the case;

(ii) with due regard to, at least, the-

(aa) nature of and circumstances relating to the offence;

(bb) personal circumstances of the accused;

(cc) previous convictions of the accused, if any; and

(dd) interests of the community, and

(iii) after affording the complainant or his or her representative, where it is reasonable to do so and taking into account the nature of and circumstances relating to the offence and the interests of the complainant, the opportunity to make representations to the prosecutor regarding-

(aa) the contents of the agreement; and

(bb) the inclusion in the agreement of a condition relating to compensation or the rendering to the complainant of some specific benefit or service in lieu of compensation for damage or pecuniary loss.

(c) The requirements of paragraph (b)(i) may be dispensed with if the prosecutor is satisfied that consultation with the person charged with the investigation of the case will delay the proceedings to such an extent that it could-

(i) cause substantial prejudice to the prosecution, the accused, the complainant or his or her representative; and

(ii) affect the administration of justice adversely.

(2) An agreement contemplated in subsection (1) shall be in writing and shall at least-

(a) state that the accused, before entering into the agreement, has been informed that he or she has the right-

(i) to be presumed innocent until proved guilty beyond reasonable doubt;

(ii) to remain silent and not to testify during the proceedings; and

(iii) not to be compelled to give self-incriminating evidence;

(b) state fully the terms of the agreement, the substantial facts of the matter, all other facts relevant to the sentence agreement and any admissions made by the accused;

(c) be signed by the prosecutor, the accused and his or her legal representative; and

(d) if the accused has negotiated with the prosecutor through an interpreter, contain a certificate by the interpreter to the effect that he or she interpreted accurately during the negotiations and in respect of the contents of the agreement.

(3) The court shall not participate in the negotiations contemplated in subsection (1).

(4)

(a) The prosecutor shall, before the accused is required to plead, inform the court that an agreement contemplated in subsection (1) has been entered into and the court shall then-

(i) require the accused to confirm that such an agreement has been entered into; and

(ii) satisfy itself that the requirements of subsection (1)(b)(i) and (iii) have been complied with.

(b) If the court is not satisfied that the agreement complies with the requirements of subsection (1)(b)(i) and (iii), the court shall-

(i) inform the prosecutor and the accused of the reasons for noncompliance; and

(ii) afford the prosecutor and the accused the opportunity to comply with the requirements concerned.

(5) If the court is satisfied that the agreement complies with the requirements of subsection (1)(b)(i) and (iii), the court shall require the accused to plead to the charge and order that the contents of the agreement be disclosed in court.

(6)

(a) After the contents of the agreement have been disclosed, the court shall question the accused to ascertain whether-

(i) he or she confirms the terms of the agreement and the admissions made by him or her in the agreement;

(ii) with reference to the alleged facts of the case, he or she admits the allegations in the charge to which he or she has agreed to plead guilty; and

(iii) the agreement was entered into freely and voluntarily in his or her sound and sober senses and without having been unduly influenced.

(b) After an inquiry has been conducted in terms of paragraph (a), the court shall, if-

(i) the court is not satisfied that the accused is guilty of the offence in respect of which the agreement was entered into; or

(ii) it appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge; or

(iii) for any other reason, the court is of the opinion that the plea of guilty by the accused should not stand,

record a plea of not guilty and inform the prosecutor and the accused of the reasons therefor.

(c) If the court has recorded a plea of not guilty, the trial shall start de novo before another presiding officer: Provided that the accused may waive his or her right to be tried before another presiding officer.

(7)

(a) If the court is satisfied that the accused admits the allegations in the charge and that he or she is guilty of the offence in respect of which the agreement was entered into, the court shall proceed to consider the sentence agreement.

(b) For purposes of paragraph (a), the court-

(i) may-

(aa) direct relevant questions, including questions about the previous convictions of the accused, to the prosecutor and the accused; and

(bb) hear evidence, including evidence or a statement by or on behalf of the accused or the complainant; and

(ii) must, if the offence concerned is an offence-

(aa) referred to in the Schedule to the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997); or

(bb) for which a minimum penalty is prescribed in the law creating the offence,

have due regard to the provisions of that Act or law.

(8) If the court is satisfied that the sentence agreement is just, the court shall inform the prosecutor and the accused that the court is so satisfied, whereupon the court shall convict the accused of the offence charged and sentence the accused in accordance with the sentence agreement.

(9)

(a) If the court is of the opinion that the sentence agreement is unjust, the court shall inform the prosecutor and the accused of the sentence which it considers just.

(b) Upon being informed of the sentence which the court considers just, the prosecutor and the accused may-

(i) abide by the agreement with reference to the charge and inform the court that, subject to the right to lead evidence and to present argument relevant to sentencing, the court may proceed with the imposition of sentence; or

(ii) withdraw from the agreement.

(c) If the prosecutor and the accused abide by the agreement as contemplated in paragraph (b)(i), the court shall convict the accused of the offence charged and impose the sentence which it considers just.

(d) If the prosecutor or the accused withdraws from the agreement as contemplated in paragraph (b)(ii), the trial shall start de novo before another presiding officer: Provided that the accused may waive his or her right to be tried before another presiding officer.

(10) Where a trial starts *de novo* as contemplated in subsection (6)(c) or (9)(d)-

(a) the agreement shall be null and void and no regard shall be had or reference made to-

(i) any negotiations which preceded the entering into the agreement;

(ii) the agreement; or

(iii) any record of the agreement in any proceedings relating thereto,

unless the accused consents to the recording of all or certain admissions made by him or her in the agreement or during any proceedings relating thereto and any admission so recorded shall stand as proof of such admission;

(b) the prosecutor and the accused may not enter into a plea and sentence agreement in respect of a charge arising out of the same facts; and

(c) the prosecutor may proceed on any charge.

(11)

(a) The National Director of Public Prosecutions, in consultation with the Minister, shall issue directives regarding all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this section and any directive so issued shall be observed in the application of this section.

(b) The directives contemplated in paragraph (a)

(i) must prescribe the procedures to be followed in the application of this section relating to-

(aa) any offence referred to in the Schedule to the Criminal Law Amendment Act, 1997, or any other offence for which a minimum penalty is prescribed in the law creating the offence;

(bb) any offence in respect of which a court has the power or is required to conduct a specific enquiry, whether before or after convicting or sentencing the accused; and

(cc) any offence in respect of which a court has the power or is required to make a specific order upon conviction of the accused;

(ii) may prescribe the procedures to be followed in the application of this section relating to any other offence in respect of which the National Director of Public Prosecutions deems it necessary or expedient to prescribe specific procedures;

(iii) must ensure that adequate disciplinary steps shall be taken against a prosecutor who fails to comply with any directive; and

(iv) must ensure that comprehensive records and statistics relating to the implementation and application of this section are kept by the prosecuting authority.

(c) The National Director of Public Prosecutions shall submit directives issued under this subsection to Parliament before those directives take effect, and the first directives so issued, must be submitted to Parliament within four months of the commencement of this section.

(d) Any directive issued under this subsection may be amended or withdrawn in like manner.

(12) The National Director of Public Prosecutions shall at least once every year submit the records and statistics referred to in subsection (11)(b)(iv) to Parliament.

(13) In this section “sentence agreement” means an agreement contemplated in subsection (1)(a)(ii).

(Section 105A inserted by section 2 of Act 62 of 2001)

106. Pleas

(1) When an accused pleads to a charge he may plead –

(a) that he is guilty of the offence charged or of any offence of which he may be convicted on the charge; or

(b) that he is not guilty; or

(c) that he has already been convicted of the offence with which he is charged; or

(d) that he has already been acquitted of the offence with which he is charged; or

(e) that he has received a free pardon under section 327(6) from the State President for the offence charged; or

(f) that the court has no jurisdiction to try the offence; or

(g) that he has been discharged under the provisions of section 204 from prosecution for the offence charged; or

(h) that the prosecutor has no title to prosecute.

(i) that the prosecution may not be resumed or instituted owing to an order by a court under section 342A(3)(c).

(Section 106(1)(i) added by section 4 of Act 86 of 1996)

(2) Two or more pleas may be pleaded together except that a plea of guilty may not be pleaded with any other plea to the same charge.

(3) An accused shall give reasonable notice to the prosecution of his intention to plead a plea other than the plea of guilty or not guilty, and shall in such notice state the ground on which he bases his plea: Provided that the requirement of such notice may be waived by the attorney-general or the prosecutor, as the case may be, and the court may, on good cause shown, dispense with such notice or adjourn the trial to enable such notice to be given.

(4) An accused who pleads to a charge, other than a plea that the court has no jurisdiction to try the offence, or an accused on behalf of whom a plea of not guilty is entered by the court, shall, save as is otherwise expressly provided by this Act or any other law, be entitled to demand that he be acquitted or be convicted.

107. Truth and publication for public benefit of defamatory matter to be specially pleaded

A person charged with the unlawful publication of defamatory matter, who sets up as a defence that the defamatory matter is true and that it was for the public benefit that the matter should be published, shall plead such defence specially, and may plead it with any other plea except the plea of guilty.

108. Issues raised by plea to be tried

If an accused pleads a plea other than a plea of guilty, he shall, subject to the provisions of sections 115, 122 and 141(3), by such plea be deemed to demand that the issues raised by the plea be tried.

109. Accused refusing to plead

Where an accused in criminal proceedings refuses to plead to any charge, the court shall record a plea of not guilty on behalf of the accused, and a plea so recorded shall have the same effect as if it had been actually pleaded.

CHAPTER 16
JURISDICTION

110. Accused brought before court which has no jurisdiction

(1) Where an accused does not plead that the court has no jurisdiction and it at any stage –

(a) after the accused has pleaded a plea of guilty or of not guilty; or

(b) where the accused has pleaded any other plea and the court has determined such plea against the accused,

appears that the court in question does not have jurisdiction, the court shall for the purposes of this Act be deemed to have jurisdiction in respect of the offence in question.

(2) Where an accused pleads that the court in question has no jurisdiction and the plea is upheld, the court shall adjourn the case to the court having jurisdiction.

110A. Jurisdiction in respect of offences committed by certain persons outside Republic

(1) Notwithstanding any other law, any South African citizen who commits an offence outside the area of jurisdiction of the courts of the Republic and who cannot be prosecuted by the courts of the country in which the offence was committed, due to the fact that the person is immune from prosecution as a result of the operation of the provisions of-

(a) the Convention on the Privileges and Immunities of the United Nations, 1946;

(b) the Convention on the Privileges and Immunities of the Specialised Agencies, 1947;

(c) the Vienna Convention on Diplomatic Relations, 1961;

(d) the Vienna Convention on Consular Relations, 1963; or

(e) any other international convention, treaty or any agreement between the Republic and any other country or international organisation,

and that person is found within the area of jurisdiction of any court in the Republic which would have had jurisdiction to try the offence if it had been committed within its area of jurisdiction, that court shall, subject to subsection (2), have jurisdiction to try that offence.

(2) No prosecution may be instituted against a person under subsection (1), unless-

(a) the offence is an offence under the laws of the Republic; and

(b) the National Director of Public Prosecutions instructs that a prosecution be instituted against the person.

(3) At the conclusion of the trial against a person under this section, a copy of the proceedings, certified by the clerk of the court or registrar, together with any remarks as the prosecutor may wish to append thereto, must be submitted to the Minister of Foreign Affairs.

(Section 110A inserted by section 11 of Act 66 of 2008)

111. Minister may remove trial to jurisdiction of another attorney-general

(1) …….

(Section 111(1) substituted by section 6(a) of Act 26 of 1987)

(Section 111(1) deleted by section 44 of Act 32 of 1998)

(1)

(a) The direction of the National Director of Public Prosecutions contemplated in section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), shall state the name of the accused, the relevant offence, the place at which (if known) and the Director in whose area of jurisdiction the relevant investigation and criminal proceedings shall be conducted and commenced.

(b) A copy of the direction shall be served on the accused, and the original thereof shall, save as is provided in subsection (3) be handed in at the court in which the proceedings are to commence.

(Section 111(2) amended by section 6(b) of Act 26 of 1987)

(Section 111(2) renumbered to 111(1) and substituted by section 44 of Act 32 of 1998)

(2) The court in which the proceedings commence shall have jurisdiction to act with regard to the offence in question as if the offence had been committed within the area of jurisdiction of such court.

(Section 111(3) renumbered to 111(2) and substituted by section 44 of Act 32 of 1998)

(3) Where the National Director issues a direction contemplated in subsection (1) after an accused has already appeared in a court, the original of such direction shall be handed in at the relevant proceedings and attached to the record of the proceedings, and the court in question shall –

(a) cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time and a date and to the court designated by the Director in whose area of jurisdiction the said criminal proceedings shall commence, whereupon such time and date and court shall be deemed to be the time and date and court appointed for the trial of the accused or to which the proceedings pending against the accused are adjourned;

(b) forward a copy of the record of the proceedings to the court in which the accused is to appear, and that court shall receive such copy and continue with the proceedings against the accused as if such proceedings had commenced before it.

(Section 111(4) amended by section 6(c) of Act 26 of 1987)

(Section 111(4) renumbered to 111(3) and substituted by section 44 of Act 32 of 1998)

(5) …….

(Section 111(5) deleted by section 68 of Act 88 of 1996)

CHAPTER 17
PLEA OF GUILTY AT SUMMARY TRIAL

112. Plea of guilty

(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea –

(a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and –

(i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*; or

(ii) deal with the accused otherwise in accordance with law;

(Section 112(1)(a) substituted by section 4(a) of Act 109 of 1984)

(Section 112(1)(a) substituted by section 7 of Act 5 of 1991)

(Section 112(1)(a) substituted by section 2 of Act 33 of 1997)

(b) the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, or if requested thereto by the prosecutor, question the accused with reference to

the alleged facts of the case in order to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.

(Section 112(1)(b) substituted by section 4(b) of Act 109 of 1984)

(Section 112(1)(b) substituted by section 7 of Act 5 of 1991)

(Section 112(1)(b) substituted by section 2 of Act 33 of 1997)

(2) If an accused or his legal adviser hands a written statement by the accused into court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the court may, in lieu of questioning the accused under subsection (1)(b), convict the accused on the strength of such statement and sentence him as provided in the said subsection if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the court may in its discretion put any question to the accused in order to clarify any matter raised in the statement.

(3) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

113. Correction of plea of guilty

(1) If the court at any stage of the proceedings under section 112(1)(a) or (b) or 112(2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.

(Section 113 renumbered to 113(1) by section 8 of Act 5 of 1991)

(Section 113(1) amended by section 5 of Act 86 of 1996)

(2) If the court records a plea of not guilty under subsection (1) before any evidence has been led, the prosecution shall proceed on the original charge laid against the accused, unless the prosecutor explicitly indicates otherwise.

(Section 113(2) added by section 8 of Act 5 of 1991)

114. Committal by magistrate's court of accused for sentence by regional court after plea of guilty

(1) If a magistrate's court, after conviction following on a plea of guilty but before sentence, is of the opinion –

(a) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court;

(Section 114(1)(a) amended by section 18(a) of Act 116 of 1993)

(b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court; or

(Section 114(1)(b) amended by section 18(b) of Act 116 of 1993)

(c) that the accused is a person referred to in section 286A(1),

(Section 114(1)(c) added by section 18(b) of Act 116 of 1993)

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction.

(2) Where an accused is committed under subsection (1) for sentence by a regional court, the record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court, and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(3)

(a) Unless the regional court concerned –

(i) is satisfied that a plea of guilty or an admission by the accused which is material to his guilt was incorrectly recorded; or

(ii) is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence,

the court shall make a formal finding of guilty and sentence the accused.

(b) If the court is satisfied that a plea of guilty or any admission by the accused which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence or that he has no valid defence to the charge, the court shall enter a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that any admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(4) The provisions of section 112(3) shall apply with reference to the proceedings under this section.

CHAPTER 18
PLEA OF NOT GUILTY AT SUMMARY TRIAL

115. Plea of not guilty and procedure with regard to issues

(1) Where an accused at a summary trial pleads not guilty to the offence charged, the presiding judge, regional magistrate or magistrate, as the case may be, may ask him whether he wishes to make a statement indicating the basis of his defence.

(2)

(a) Where the accused does not make a statement under subsection (1) or does so and it is not clear from the statement to what extent he denies or admits the issues raised by the plea, the court may question the accused in order to establish which allegations in the charge are in dispute.

(b) The court may in its discretion put any question to the accused in order to clarify any matter raised under subsection (1) or this subsection, and shall enquire from the accused whether an allegation which is not placed in issue by the plea of not guilty, may be recorded as an admission by the accused of that allegation, and if the accused so consents, such admission shall be recorded and shall be deemed to be an admission under section 220.

(3) Where the legal adviser of an accused on behalf of the accused replies, whether in writing or orally, to any question by the court under this section, the accused shall be required by the court to declare whether he confirms such reply or not.

115A. Committal of accused for trial by regional court

(1) Where an accused pleads not guilty in a magistrate's court, the court shall, subject to the provisions of section 115, at the request of the prosecutor made before any evidence is tendered, refer the accused for trial to a regional court having jurisdiction.

(2) The record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court.

(Section 115A inserted by section 4 of Act 56 of 1979)

116. Committal of accused for sentence by regional court after trial in magistrate's court

(1) If a magistrate's court, after conviction following on a plea of not guilty but before sentence, is of the opinion –

(a) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court;

(Section 116(1)(a) amended by section 19(a) of Act 116 of 1993)

(b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court; or

(Section 116(1)(b) amended by section 19(b) of Act 116 of 1993)

(c) that the accused is a person referred to in section 286A(1),

(Section 116(1)(c) added by section 19(b) of Act 116 of 1993)

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction.

(2) The record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court.

(3)

(a) The regional court shall, after considering the record of the proceedings in the magistrate's court, sentence the accused, and the judgment of the magistrate's court shall stand for this purpose and be sufficient for the regional court to pass any competent sentence: Provided that if the regional magistrate is of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice he or she may request the presiding officer in the magistrate's court to provide him or her with the reasons for the conviction and if, after considering such reasons, the regional magistrate is satisfied that the proceedings are in accordance with justice he or she may sentence the accused, but if he or she remains of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice he or she shall, without sentencing the accused, record the reasons for his or her opinion and transmit such reasons and the reasons of the presiding officer of the magistrate's court, together with the record of the proceedings in the magistrate's court, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as possible, lay the same in chambers before a judge who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him or her under section 303.

(Section 116(3)(a) amended by section 6 of Act 86 of 1996)

(b) If a regional magistrate acts under the proviso to paragraph (a), he shall inform the accused accordingly and postpone the case to some future date pending the outcome of the review proceedings, and, if the accused is in custody, the regional magistrate may make such order with regard to the detention or release of the accused as he may deem fit.

117. Committal to superior court in special case

Where an accused in a lower court pleads not guilty to the offence charged against him and a ground of his defence is the alleged invalidity of a provincial ordinance or a proclamation of the State President on which the charge against him is founded and upon the validity of which a magistrate's court is in terms of section 110 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), not competent to pronounce, the accused shall be committed for a summary trial before a superior court having jurisdiction.

(Section 117 amended by section 1 of Act 49 of 1996)

118. Non-availability of judicial officer after plea of not guilty

If the judge, regional magistrate or magistrate before whom an accused at a summary trial has pleaded not guilty is for any reason not available to continue with the trial and no evidence has been adduced yet, the trial may be continued before any other judge, regional magistrate or magistrate of the same court.

CHAPTER 19
PLEA IN MAGISTRATE'S COURT ON CHARGE JUSTICIABLE IN SUPERIOR COURT

119. Accused to plead in magistrate's court on instructions of attorney-general

When an accused appears in a magistrate's court and the alleged offence may be tried by a superior court only or is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court, the prosecutor may, notwithstanding the provisions of section 75, on the instructions of the attorney-general, whether in general or in any particular case, put the charge, as well as any other charge which shall, in terms of section 82, be disposed of in a superior court, to the accused in the magistrate's court, and the accused shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead thereto forthwith.

(Section 119 substituted by section 5 of Act 56 of 1979)
(Section 119 substituted by section 3 of Act 64 of 1982)
(Section 119 substituted by section 16 of Act 59 of 1983)

120. Charge-sheet and proof of record

The proceedings shall be commenced by the lodging of a charge-sheet with the clerk of the court in question and the provisions of subsections (2) and (3) of section 76 shall *mutatis mutandis* apply with reference to the charge-sheet and the record of the proceedings.

121. Plea of guilty

(1) Where an accused under section 119 pleads guilty to the offence charged, the presiding magistrate shall question him in terms of the provisions of paragraph (b) of section 112(1).

(2)

(a) If the magistrate is satisfied that the accused admits the allegations stated in the charge, he shall stop the proceedings.

(b) If the magistrate is not satisfied as provided in paragraph (a), he shall record in what respect he is not so satisfied and enter a plea of not guilty and deal with the matter in terms of section 122 (1): Provided that an allegation with reference to which the magistrate is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

(3) If the magistrate is satisfied as provided in subsection (2)(a), he shall adjourn the proceedings pending the decision of the attorney-general who may

(a) arraign the accused for sentence before a superior court or any other court having jurisdiction, including the magistrate's court in which the proceedings were stopped under subsection (2)(a).

(b) decline to arraign the accused for sentence before any court but arraign him for trial on any charge at a summary trial before a superior court or any other court having jurisdiction, including the magistrate's court in which the proceedings were stopped under subsection 2(a);

(c) institute a preparatory examination against the accused.

(Section 121(3) substituted by section 6 of Act 56 of 1979)

(4) The magistrate or any other magistrate of the magistrate's court concerned shall advise the accused of the decision of the attorney-general and, if the decision is that the accused be arraigned for sentence –

(a) in the magistrate's court concerned, dispose of the case on the charge on which the accused is arraigned; or

(b) in a regional court or superior court, adjourn the case for sentence by the regional court or superior court concerned.

(5)

(a) The record of the proceedings in the magistrate's court shall, upon proof thereof in the court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused or, if the accused is arraigned in the magistrate's court in which the proceedings were stopped under subsection (2)(a), the record of such proceedings shall stand as the record of that court, and the plea of guilty and any admission by the accused shall stand

and form part of the record of that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(aA) The record of the proceedings in the magistrate's court shall, upon proof thereof in the court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such admission was incorrectly recorded.

(Section 121(5)(aA) inserted by section 17 of Act 59 of 1983)

(b) Unless the accused satisfies the court that a plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty and impose any competent sentence.

(Section 121(5)(b) amended by section 29 of Act 105 of 1997)

(6) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(7) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

122. Plea of not guilty

(1) Where an accused under section 119 pleads not guilty to the offence charged, the court shall act in terms of section 115 and when that section has been complied with, the magistrate shall stop the proceedings and adjourn the case pending the decision of the attorney-general.

(2) Where the proceedings have been adjourned under subsection (1), the attorney-general may –

(i) arraign the accused on any charge at a summary trial before a superior court or any other court having jurisdiction, including the magistrate's court in which the proceedings were adjourned under subsection (1); or

(ii) institute a preparatory examination against the accused,

and the attorney-general shall advise the magistrate's court concerned of his decision.

(3) The magistrate, who need not be the magistrate before whom the proceedings under section 119 or 122(1) were conducted, shall advise the accused of the decision of the attorney-general, and if the decision is that the accused be arraigned –

(a) in the magistrate's court concerned, require the accused to plead to that charge, and, if the plea to that charge is one of guilty or the plea in respect of an offence of which the accused may on such charge be convicted is one of guilty and the prosecutor accepts such plea, deal with the matter in accordance with the provisions of section 112, in which event the provisions of section 114(1) shall not apply, or, if the plea is one of not guilty, deal with the matter in accordance with the provisions of section 115 and proceed with the trial;

(Section 122(3)(a) substituted by section 16 of Act 139 of 1992)

(b) in a regional court or a superior court, commit the accused for a summary trial before the court concerned.

(4) The record of the proceedings in the magistrate's court shall, upon proof thereof in the court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such an admission.

CHAPTER 19A

PLEA IN MAGISTRATE'S COURT ON CHARGE TO BE ADJUDICATED IN REGIONAL COURT

122A. Accused to plead in magistrate's court on charge to be tried in regional court

When an accused appears in a magistrate's court and the alleged offence may be tried by a regional court but not by a magistrate's court or the prosecutor informs the court that he is of the opinion that the alleged offence is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court but not of the jurisdiction of a regional court, the prosecutor may, notwithstanding the provisions of section 75, put the relevant charge, as well as any other charge which shall, in terms of section 82, be disposed of by a regional court, to the accused, who shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead thereto forthwith.

(Section 122A inserted by section 7 of Act 56 of 1979)

(Section 122A substituted by section 18 of Act 59 of 1983)

122B. Charge-sheet and proof of record

The provisions of section 120 shall *mutatis mutandis* apply with reference to the proceedings under section 122A and the record of the proceedings.

(Section 122B inserted by section 7 of Act 56 of 1979)

122C. Plea of guilty

(1) Where an accused under section 122A pleads guilty to the offence charged, the presiding magistrate shall question him in terms of the provisions of paragraph (b) of section 112(1).

(2)

(a) If the magistrate is satisfied that the accused admits the allegations stated in the charge, he shall adjourn the case for sentence by the regional court concerned.

(b) If the magistrate is not satisfied as provided in paragraph (a), he shall record in what respect he is not so satisfied and enter a plea of not guilty and deal with the matter in terms of section 122D(1): Provided that an allegation with reference to which the magistrate is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

(3)

(a) The record of the proceedings in the magistrate's court shall, upon proof thereof in the regional court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused, and the plea of guilty and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(b) Unless the accused satisfies the court that the plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty, and impose any competent sentence.

(4) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(5) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purpose of determining an appropriate sentence.

(Section 122C inserted by section 7 of Act 56 of 1979)

122D. Plea of not guilty

(1) Where an accused under section 122A pleads not guilty to the offence charged, the court shall act in terms of section 115 and when that section has been complied with, the magistrate shall commit the accused for a summary trial in the regional court concerned on the charge to which he has pleaded not guilty or on the charge in respect of which a plea of not guilty has been entered under section 122C(2)(b).

(2) The regional court may try the accused on the charge in respect of which he has been committed for a summary trial under subsection (1) or on any other or further charge which the prosecutor may prefer against the accused and which the court is competent to try.

(3) The record of proceedings in the magistrate's court shall, upon proof thereof in the regional court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such an admission.

(Section 122D inserted by section 7 of Act 56 of 1979)

(Chapter 19A inserted by section 7 of Act 56 of 1979)

CHAPTER 20
PREPARATORY EXAMINATION

123. Attorney-general may instruct that preparatory examination be held

If an attorney-general is of the opinion that it is necessary for the more effective administration of justice –

(a) that a trial in a superior court be preceded by a preparatory examination in a magistrate's court into the allegations against the accused, he may, where he does not follow the procedure under section 119, or, where he does follow it and the proceedings are adjourned under section 121(3) or 122(1) pending the decision of the attorney-general, instruct that a preparatory examination be instituted against the accused;

(Section 123(a) amended by section 8 of Act 56 of 1979)

(b) that a trial in a magistrate's court or a regional court be converted into a preparatory examination, he may at any stage of the proceedings, but before sentence is passed, instruct that the trial be converted into a preparatory examination.

124. Proceedings preceding holding of preparatory examination to form part of preparatory examination record

Where an attorney-general acts under paragraph (a) or (b) of section 123 –

(a) the record of any proceedings under section 121(1) or 122(1), or of any proceedings in the magistrate's court or regional court before the trial was converted into a preparatory examination, shall form part of the preparatory examination record;

(Section 124(a) amended by section 9 of Act 56 of 1979)

(b) and the accused has pleaded to a charge, the preparatory examination shall continue on the charge to which the accused has pleaded: Provided that where evidence is led at such preparatory examination which relates to an offence, other than the offence contained in the charge to which the accused has pleaded, allegedly committed by the accused, such evidence shall not be excluded on the ground only that the evidence does not relate to the offence to which the accused has pleaded.

125. Attorney-general may direct that preparatory examination be conducted at a specified place

(1) Where an attorney-general instructs that a preparatory examination be instituted or that a trial be converted into a preparatory examination, he may, if it appears to him expedient on account of the number of accused involved or of excessive inconvenience or of possible disturbance of the public order, that the preparatory examination be held within his area of jurisdiction in a court other than the court in which the relevant proceedings were commenced, direct that the preparatory examination be instituted in such other court or, where a trial has been converted into a preparatory examination, be continued in such other court.

(2) The magistrate or regional magistrate shall, after advice of the decision of the attorney-general, advise the accused of· the decision of the attorney-general and adjourn the proceedings to such other court, and thereafter forward a copy of the record of the proceedings, certified as correct by the clerk of the court, to the court to which the proceedings have been adjourned.

(3) The court to which the proceedings are adjourned under subsection (2), shall receive the copy of the record referred to in that subsection, which shall then form part of the proceedings of that court, and shall proceed to conduct the preparatory examination as if it were a preparatory examination instituted in that court.

126. Procedure to be followed by magistrate at preparatory examination

Where an attorney-general instructs that a preparatory examination be held against an accused, the magistrate or regional magistrate shall, after advice of the decision of the attorney-general, advise the

accused of the decision of the attorney-general and proceed in the manner hereinafter described to enquire into the charge against the accused.

127. Recalling of witnesses after conversion of trial into preparatory examination

Where an attorney-general instructs that a trial be converted into a preparatory examination, it shall not be necessary for the magistrate or regional magistrate to recall any witness who has already given evidence at the trial, but the record of the evidence thus given, certified as correct by the magistrate or regional magistrate, as the case may be, or, if such evidence was recorded in shorthand or by mechanical means, any document purporting to be a transcription of the original record of such evidence and purporting to be certified as correct under the hand of the person who transcribed it, shall have the same legal force and effect and shall be admissible in evidence in the same circumstances as the evidence given in the course of a preparatory examination: Provided that if it appears to the, magistrate or regional magistrate concerned that it may be in the interests of justice to have a witness already examined recalled for further examination, then such witness shall be recalled and further examined and the evidence given by him shall be recorded in the same manner as other evidence given at a preparatory examination.

128. Examination of prosecution witnesses at preparatory examination

The prosecutor may, at a preparatory examination, call any witness in support of the charge to which the accused has pleaded or to testify in relation to any other offence allegedly committed by the accused.

129. Recording of evidence at preparatory examination and proof of record

(1) The evidence given at a preparatory examination shall be recorded, and if such evidence is recorded in shorthand or by mechanical means, a document purporting to be a transcription of the original record of such evidence and purporting to be certified as correct under the hand of the person who transcribed such evidence, shall have the same legal force and effect as such original record.

(2) The record of a preparatory examination may be proved in a court by the mere production thereof or of a copy thereof in terms of section 235.

130. Charge to be put at conclusion of evidence for prosecution

The prosecutor shall, at the conclusion of the evidence in support of the charge, put to the accused such charge or charges as may arise from the evidence and which the prosecutor may prefer against the accused.

131. Accused to plead to charge

The magistrate or regional magistrate, as the case may be, shall, subject to the provisions of sections 77 and 85, require an accused to whom a charge is put under section 130 forthwith to plead to the charge.

132. Procedure after plea

(1)

(a) Where an accused who has been required under section 131 to plead to a charge to which he has not pleaded before, pleads guilty to the offence charged, the presiding judicial officer shall question him in accordance with the provisions of paragraph (b) of section 112(1).

(b) If the presiding judicial officer is not satisfied that the accused admits all the allegations in the charge, he shall record in what respect he is not so satisfied and enter a plea of not guilty: Provided that an allegation with reference to which the said judicial officer is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

(2) Where an accused who has been required under section 131 to plead to a charge to which he has not pleaded before, pleads not guilty to the offence charged, the presiding judicial officer shall act in accordance with the provisions of section 115.

133. Accused may testify at preparatory examination

An accused may, after the provisions of section 132 have been complied with but subject to the provisions of section 151(1)(b) which shall *mutatis mutandis* apply, give evidence or make an unsworn statement in relation to a charge put to him under section 130, and the record of such evidence or statement shall be received in evidence before any court in criminal proceedings against the accused upon its mere production without further proof.

134. Accused may call witnesses at preparatory examination

An accused may call any competent witness on behalf of the defence.

135. Discharge of accused at conclusion of preparatory examination

As soon as a preparatory examination is concluded and the magistrate or regional magistrate, as the case may be, is upon the whole of the evidence of the opinion that no sufficient case has been made out to put the accused on trial upon any charge put to the accused under section 130 or upon any charge in respect of an offence of which the accused may on such charge be convicted, he may discharge the accused in respect of such charge.

136. Procedure with regard to exhibits at preparatory examination

The magistrate or regional magistrate, as the case may be, shall cause every document and every article produced or identified as an exhibit by any witness at a preparatory examination to be inventoried and labelled or otherwise marked, and shall cause such documents and articles to be kept in safe custody pending any trial following upon such preparatory examination.

137. Magistrate to transmit record of preparatory examination to attorney-general

The magistrate or regional magistrate, as the case may be; shall, at the conclusion of a preparatory examination and whether or not the accused is under section 135 discharged in respect of any charge, send a copy of the record of the preparatory examination to the attorney-general and, where the accused is not discharged in respect of all the charges put to him under section 130, adjourn the proceedings pending the decision of the attorney-general

138. Preparatory examination may be continued before different judicial officer

A preparatory examination may at any stage be continued by a judicial officer other than the judicial officer before whom the proceedings were commenced, and, if necessary, again be continued by the judicial officer before whom the proceedings were commenced.

139. Attorney-general may arraign accused for sentence or trial

After considering the record of a preparatory examination transmitted to him under section 137, the attorney-general may –

(a) in respect of any charge to which the accused has under section 131 pleaded guilty, arraign the accused for sentence before any court having jurisdiction;

(b) arraign the accused for trial before any court having jurisdiction, whether the accused has under section 131 pleaded guilty or not guilty to any charge and whether or not he has been discharged under section 135;

(c) decline to prosecute the accused,

and the attorney-general shall advise the lower court concerned of his decision.

140. Procedure where accused arraigned for sentence

(1) Where an accused is under section 139(a) arraigned for sentence, any magistrate or regional magistrate of the court in which the preparatory examination was held shall advise the accused of the decision of the attorney-general and, if the decision is that the accused be arraigned –

(a) in the court concerned, dispose of the case on the charge on which the accused is arraigned; or

(b) in a court other than the court concerned, adjourn the case for sentence by such other court.

(2)

(a) The record of the preparatory examination shall, upon proof thereof in the court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused or, if the accused is arraigned in the court in which the preparatory examination was held, the record of the preparatory examination shall stand as the record of that court, and the plea of guilty and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(b) Unless the accused satisfies the court that the plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty and impose any competent sentence.

(Section 140(2)(b) amended by section 30 of Act 105 of 1997)

(3) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(4) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

141. Procedure where accused arraigned for trial

(1) Where an accused is under section 139(b) arraigned for trial, a magistrate or regional magistrate of the court in which the preparatory examination was held shall advise the accused of the decision of the attorney-general and, if the accused is to be arraigned in a court other than the court concerned, commit the accused for trial by such other court.

(2) Where an accused is arraigned for trial after a preparatory examination, the case shall be dealt with in all respects as with a summary trial.

(3) The record of the preparatory examination shall, upon proof thereof in the court in which the accused is arraigned for trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such admission: Provided that the evidence adduced at such preparatory examination shall not form part of the record of the trial of the accused unless –

(a) the accused pleads guilty at his trial to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea; or

(b) the parties to the proceedings agree that any part of such evidence be admitted at the proceedings.

(4)

(a) Where an accused who has been discharged under section 135 is arraigned for trial under section 139b), the clerk of the court where the preparatory examination was held shall issue to him a written notice to that effect and stating the place, date and time for the appearance of the accused in that court for committal for trial, or, if he is to be arraigned in that court, to plead to the charge on which he is to be arraigned.

(b) The notice referred to in paragraph (a) shall be served on the accused in the manner provided for in sections 54(2) and (3) for the service of a summons in a lower court and the provisions of sections 55(1) and (2) shall *mutatis mutandis* apply with reference to such a notice.

(c) If the accused is committed for trial by another court, the court committing the accused may direct that he be detained in custody, whereupon the provisions of Chapter 9 shall apply with reference to the release of the accused on bail.

142. Procedure where attorney-general declines to prosecute

Where an attorney-general under section 139(c) declines to prosecute an accused, he shall advise the magistrate of the district in which the preparatory examination was held of his decision, and such magistrate shall forthwith have the accused released from custody or, if the accused is not in custody, advise the accused in writing of the decision of the attorney-general, whereupon no criminal proceedings shall again be instituted against the accused in respect of the charge in question.

143. Accused may inspect preparatory examination record and is entitled to copy thereof

(1) An accused who is arraigned for sentence or for trial under section 139 may, without payment, inspect the record of the preparatory examination at the time of his arraignment before the court.

(2)

(a) An accused who is arraigned for sentence or for trial under section 139 shall be entitled to a copy of the record of the preparatory examination upon payment, except where a legal practitioner under the Legal Aid Act, 1969 (Act 22 of 1969), or *pro Deo* counsel is appointed to defend the accused or where the accused is not legally represented, of a reasonable amount not exceeding twenty-five cents for each folio of seventy-two words or part thereof.

(b) The clerk of the court shall as soon as possible provide the accused or his legal adviser with a copy of the preparatory examination record in accordance with the provisions of paragraph (a).

CHAPTER 21
TRIAL BEFORE SUPERIOR COURT

144. Charge in superior court to be laid in an indictment

(1) Where an attorney-general arraigns an accused for sentence or trial by a superior court, the charge shall be contained in a document called an indictment, which shall be framed in the name of the attorney-general.

(Section 144(1) substituted by section 10(a) of Act 56 of 1979)

(2) The indictment shall, in addition to the charge against the accused, include the name and, where known and where applicable, the address and a description of the accused with regard to sex, nationality and age.

(Section 144(2) substituted by section 17 of Act 139 of 1992)

(3)

(a) Where an attorney-general under section 75, 121(3)(b) or 122(2)(i) arraigns an accused for a summary trial in a superior court, the indictment shall be accompanied by a summary of the substantial facts of the case that, in the opinion of the attorney-general, are necessary to inform the accused of the allegations against him and that will not be prejudicial to the administration of justice or the security of the State, as well as a list of the names and addresses of the witnesses the attorney-general intends calling at the summary trial on behalf of the State:

Provided that –

(i) this provision shall not be so construed that the State shall be bound by the contents of the summary;

(ii) the attorney-general may withhold the name and address of a witness if he is of the opinion that such witness may be tampered with or be intimidated or that it would be in the interest of the security of the State that the name and address of such witness be withheld;

(iii) the omission of the name or address of a witness from such list shall in no way affect the validity of the trial.

(Section 144(3)(a) amended by section 10(b) of Act 56 of 1979)

(b) Where the evidence for the State at the trial of the accused differs in a material respect from the summary referred to in paragraph (a), the trial court may, at the request of the accused and if it appears to the court that the accused might be prejudiced in his defence by reason of such difference, adjourn the trial for such period as to the court may seem adequate.

(4)

(a) An indictment, together with a notice of trial referred to in the rules of court, shall, unless an accused agrees to a shorter period, be served on an accused at least ten days (Sundays and public holidays excluded) before the date appointed for the trial –

(i) in accordance with the procedure and manner laid down by the rules of court, by handing it to him personally, or, if he cannot be found, by delivering it at his place of residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there, or, if he has been released on bail, by leaving it at the place determined under section 62 for the service of any document on him; or

(ii) by the magistrate or regional magistrate committing him to the superior court, by handing it to him.

(b) A return of the mode of service by the person who served the indictment and the notice of trial, or, if the said documents were served in court on the accused by a magistrate or regional magistrate, an endorsement to that effect on the record of proceedings, may, upon the failure of the accused to attend the proceedings in the superior court, be handed in at the proceedings and shall be *prima facie* proof of the service.

(c) The provisions of section 55(1) and (2) shall *mutatis mutandis* apply with reference to a notice of trial served on an accused in terms of this subsection.

145. Trial in superior court by judge sitting with or without assessors

(1)

(a) Except as provided in section 148, an accused arraigned before a superior court shall be tried by a judge of that court sitting with or without assessors in accordance with the provisions set out hereunder.

(b) An assessor for the purposes of this section means a person who, in the opinion of the judge who presides at a trial, has experience in the administration of justice or skill in any matter which may be considered at the trial.

(2) Where an attorney-general arraigns an accused before a superior court –

(a) for trial and the accused pleads not guilty; or

(b) for sentence, or for trial and the accused pleads guilty, and a plea of not guilty is entered at the direction of the presiding judge,

the presiding judge may summon not more than two assessors to assist him at the trial.

(Section 145(2) amended by section 2 of Act 107 of 1990)

(Section 145(2) amended by section 31 of Act 105 of 1997)

(3) No assessor shall hear any evidence unless he first takes an oath or, as the case may be, makes an affirmation, administered by the presiding judge, that he will, on the evidence placed before him, give a true verdict upon the issues to be tried.

(4) An assessor who takes an oath or makes an affirmation under subsection (3) shall be a member of the court: Provided that-

(a) subject to the provisions of paragraphs (b) and (c) of this proviso and of section 217(3)(b), the decision or finding of the majority of the members of the court upon any question of fact or upon the question referred to in the said paragraph (b) shall be the decision or finding of the court, except when the presiding judge sits with only one assessor, in which case the decision or finding of the judge shall, in the case of a difference of opinion, be the decision or finding of the court;

(b) if the presiding judge is of the opinion that it would be in the interests of the administration of justice that the assessor or the assessors assisting him do not take part in any decision upon the question whether evidence of any confession or other statement made by an accused is admissible as evidence against him, the judge alone shall decide upon such question, and he may for this purpose sit alone;

(c) the presiding judge alone shall decide upon any other question of law or upon any question whether any matter constitutes a question of law or a question of fact, and he may for this purpose sit alone.

(Section 145(4) substituted by section 4 of Act 64 of 1982)

(5) If an assessor is not in the full-time employment of the State, he shall be entitled to such compensation as the Minister, in consultation with the Minister of Finance, may determine in respect of· expenses incurred by him in connection with his attendance at the trial, and in respect of his services as assessor.

146. Reasons for decision by superior court in criminal trial

A judge presiding at a criminal trial in a superior court shall –

(a) where he decides any question of law, including any question under paragraph (c) of the proviso to section 145(4) whether any matter constitutes a question of law or a question of fact, give the reasons for his decision;

(b) whether he sits with or without assessors, give the reasons for the decision or finding of the court upon any question of fact;

(c) where he sits with assessors, give the reasons for the decision or finding of the court upon the question referred to in paragraph (b) of the proviso to section 145(4);

(d) where he sits with assessors and there is a difference of opinion upon any question of fact or upon the question referred to in paragraph (b) of the proviso to section 145(4), give the reasons for the decision or finding of the member of the court who is in the minority or, where the presiding judge sits with only one assessor, of such an assessor.

(Section 146 substituted by section 5 of Act 64 of 1982)

147. Death or incapacity of assessor

(1) If an assessor dies or, in the opinion of the presiding judge, becomes unable to act as assessor at any time during a trial, the presiding judge may direct –

(a) that the trial proceed before the remaining member or members of the court; or

(b) that the trial start *de novo*, and for that purpose summon an assessor in the place of the assessor who has died or has become unable to act as assessor.

(2) Where the presiding judge acts under subsection (1)(b), the plea already recorded shall stand.

148. …….

(Section 148 repealed by section 10 of Act 62 of 2000)

149. Change of venue in superior court after indictment has been lodged.

(1) A superior court may, at any time after an indictment has been lodged with the registrar of that court and before the date of trial, upon application by the prosecution and after notice to the accused, or upon application by the accused after notice to the prosecution, order that the trial be held at a place within the area of jurisdiction of such court, other than the place determined for the trial, and that it be held on a date and at a time, other than the date and time determined for the trial.

(2) If the accused is not present or represented at such an application by the prosecution or if the prosecution is not represented at such an application by the accused, the court shall direct that a copy of the order be served on the accused or, as the case may be, on the prosecution, and upon service thereof, the venue and date and time as changed shall be deemed to be the venue and date and time respectively that were originally appointed for the trial.

CHAPTER 22
CONDUCT OF PROCEEDINGS

150. Prosecutor may address court and adduce evidence

(1) The prosecutor may at any trial, before any evidence is adduced, address the court for the purpose of explaining the charge and indicating, without comment, to the court what evidence he intends adducing in support of the charge.

(2)

(a) The prosecutor may then examine the witnesses for the prosecution and adduce such evidence as may be admissible to prove that the accused committed the offence referred to in the charge or that he committed an offence of which he may be convicted on the charge.

(b) Where any document may be received in evidence before any court upon its mere production, the prosecutor shall read out such document in court unless the accused is in possession of a copy of such document or dispenses with the reading out thereof.

151. Accused may address court and adduce evidence

(1)

(a) If an accused is not under section 174 discharged at the close of the case for the prosecution, the court shall ask him whether he intends adducing any evidence on behalf of the defence, and if he answers in the affirmative, he may address the court for the purpose of indicating to the court, without comment, what evidence he intends adducing on behalf of the defence.

(b) The court shall also ask the accused whether he himself intends giving evidence on behalf of the defence, and –

(i) if the accused answers in the affirmative, he shall, except where the court on good cause shown allows otherwise, be called as a witness before any other witness for the defence; or

(ii) if the accused answers in the negative but decides, after other evidence has been given on behalf of the defence, to give evidence himself, the court may draw such inference from the accused's conduct as may be reasonable in the circumstances.

(2)

(a) The accused may then examine any other witness for the defence and adduce such other evidence on behalf of the defence as may be admissible.

(b) Where any document may be received in evidence before any court upon its mere production and the accused wishes to place such evidence before the court, he shall read out the relevant document in court unless the prosecutor is in possession of a copy of such document or dispenses with the reading out thereof.

152. Criminal proceedings to be conducted in open court

Except where otherwise expressly provided by this Act or any other law, criminal proceedings in any court shall take place in open court, and may take place on any day.

153. Circumstances in which criminal proceedings shall not take place in open court

(1) In addition to the provisions of section 63(5) of the Child Justice Act, 2008, if it appears to any court that it would, in any criminal proceedings pending before that court, be in the interests of the security of the State or of good order or of public morals or of the administration of justice that such proceedings be held behind closed doors, it may direct that the public or any class thereof shall not be present at such proceedings or any part thereof.

(Section 153(1) substituted by section 99(1) of Act 75 of 2008)

(2) If it appears to any court at criminal proceedings that there is a likelihood that harm might result to any person, other than an accused, if he testifies at such proceedings, the court may direct –

(a) that such person shall testify behind closed doors and that no person shall be present when such evidence is given unless his presence is necessary in connection with such proceedings or is authorized by the court;

(b) that the identity of such person shall not be revealed or that it shall not be revealed for a period specified by the court.

(3) In criminal proceedings relating to a charge that the accused committed or attempted to commit-

(a) any sexual offence as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, towards or in connection with any other person;

(b) any act for the purpose of furthering the commission of a sexual offence as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, towards or in connection with any other person; or

(c) extortion or any statutory offence of demanding from any other person some advantage which was not due and, by inspiring fear in the mind of such other person, compelling him to render such advantage,

the court before which such proceedings are pending may, at the request of such other person or, if he is a minor, at the request of his parent or guardian, direct that any person whose presence is not necessary at the proceedings or any person or class of persons mentioned in the request, shall not be present at the proceedings: Provided that judgment shall be delivered and sentence shall be passed in open court if the court is of the opinion that the identity of the other person concerned would not be revealed thereby.

(Section 153(3) substituted by section 68 of Act 32 of 2007)

(3A) Any person whose presence is not necessary at criminal proceedings referred to in paragraphs (a) and (b) of subsection (3), shall not be admitted at such proceedings while the other person referred to in those paragraphs is giving evidence, unless such other person or, if he is a minor, his parent or guardian or a person in *loco parentis*, requests otherwise.

(Section 153(3A) inserted by section 2 of Act 103 of 1987)

(4) …….

(Section 153(4) deleted by section 99(1) of Act 75 of 2008)

(5) Where a witness at criminal proceedings before any court is under the age of eighteen years, the court may direct that no person, other than such witness and his parent or guardian or a person in loco parentis, shall be present at such proceedings, unless such person's presence is necessary in connection with such proceedings or is authorized by the court.

(6) The court may direct that no person under the age of eighteen years shall be present at criminal proceedings before the court, unless he is a witness referred to in subsection (5) and is actually giving evidence at such proceedings or his presence is authorized by the court.

154. Prohibition of publication of certain information relating to criminal proceedings

(1) Where a court under section 153(1) on any of the grounds referred to in that subsection directs that the public or any class thereof shall not be present at any proceedings or part thereof, the court may direct that no information relating to the proceedings or any part thereof held behind closed doors shall be published in any manner whatever: Provided that a direction by the court shall not prevent the publication of information relating to the name and personal particulars of the accused, the charge against him, the plea, the verdict and the sentence, unless the court is of the opinion that the

publication of any part of such information might defeat the object of its direction under section 153(1), in which event the court may direct that such part shall not be published.

(2)

(a) Where a court under section 153(3) directs that any person or class of persons shall not be present at criminal proceedings or where any person is in terms of section 153(3A) not admitted at criminal proceedings, no person shall publish in any manner whatever any information which might reveal the identity of any complainant in the proceedings: Provided that the presiding judge or judicial officer may authorize the publication of such information if he is of the opinion that such publication would be just and equitable.

(Section 154(2)(a) substituted by section 3 of Act 103 of 1987)

(b) No person shall at any stage before the appearance of an accused in a court upon any charge referred to in section 153(3) or at any stage after such appearance but before the accused has pleaded to the charge, publish in any manner whatever any information relating to the charge in question.

(3) No person shall publish in any manner whatever any information which reveals or may reveal the identity of an accused under the age of eighteen years or of a witness at criminal proceedings who is under the age of eighteen years: Provided that the presiding judge or judicial officer may authorize the publication of so much of such information as he may deem fit if the publication thereof would in his opinion be just and equitable and in the interest of any particular person.

(4) No prohibition or direction under this section shall apply with reference to the publication in the form of a *bona fide* law report of –

(a) information for the purpose of reporting any question of law relating to the proceedings in question; or

(b) any decision or ruling given by any court on such question,

if such report does not mention the name of the person charged or of the person against whom or in connection with whom the offence in question was alleged to have been committed or of any witness at such proceedings, and does not mention the place where the offence in question was alleged to have been committed.

(5) Any person who publishes any information in contravention of this section or contrary to any direction or authority under this section or who in any manner whatever reveals the identity of a witness in contravention of a direction under section 153(2), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment if the person in respect of whom the publication or revelation of identity was done, is

over the age of 18 years, and if such person is under the age of 18 years, to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(Section 154(5) substituted by section 12 of Act 33 of 1986)

(Section 154(5) substituted by section 68 of Act 32 of 2007)

(6) The provisions of section 300 are applicable, with the changes required by the context, upon the conviction of a person in terms of subsection (5) and if-

(a) the criminal proceedings that gave rise to the publication of information or the revelation of identity as contemplated in that subsection related to a charge that an accused person committed or attempted to commit any sexual act as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, towards or in connection with any other person or any act for the purpose of procuring or furthering the commission of a sexual act, as contemplated in that Act, towards or in connection with any other person; and

(b) the other person referred to in paragraph (a) suffered any physical, psychological or other injury or loss of income or support.

(Section 154(6) added by section 68 of Act 32 of 2007)

155. Persons implicated in same offence may be tried together

(1) Any number of participants in the same offence may be tried together and any number of accessories after the same fact may be tried together or any number of participants in the same offence and any number of accessories after that fact may be tried together, and each such participant and each such accessory may be charged at such trial with the relevant substantive offence alleged against him.

(2) A receiver of property obtained by means of an offence shall for purposes of this section be deemed to be a participant in the offence in question.

156. Persons committing separate offences at same time and place may be tried together

Any number of persons charged in respect of separate offences committed at the same place and at the same time or at about the same time, may be charged and tried together in respect of such offences if the prosecutor informs the court that evidence admissible at the trial of one of such persons will, in his opinion, also be admissible as evidence at the trial of any other such person or such persons.

157. Joinder of accused and separation of trials

(1) An accused may be joined with any other accused in the same criminal proceedings at any time before any evidence has been led in respect of the charge in question.

(2) Where two or more persons are charged jointly, whether with the same offence or with different offences, the court may at any time during the trial, upon the application of the prosecutor or of any of the accused, direct that the trial of anyone or more of the accused shall be held separately from the trial of the other accused, and the court may abstain from giving judgment in respect of any of such accused.

158. Criminal proceedings to take place in presence of accused

(1) Except as otherwise expressly provided by this Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused.

(2)

(a) A court may, subject to section 153, on its own initiative or on application by the public prosecutor, order that a witness or an accused, if the witness or accused consents thereto, may give evidence by means of closed circuit television or similar electronic media.

(b) A court may make a similar order on the application of an accused or a witness.

(3) A court may make an order contemplated in subsection (2) only if facilities therefor are readily available or obtainable and if it appears to the court that to do so would-

(a) prevent unreasonable delay;

(b) save costs;

(c) be convenient;

(d) be in the interest of the security of the State or of public safety or in the interests of justice or the public; or

(e) prevent the likelihood that prejudice or harm might result to any person if he or she testifies or is present at such proceedings.

(4) The court may, in order to ensure a fair and just trial, make the giving of evidence in terms of subsection (2) subject to such conditions as it may deem necessary: Provided that the prosecutor and the accused have the right, by means of that procedure, to question a witness and to observe the reaction of that witness.

(5) The court shall provide reasons for refusing any application by the public prosecutor for the giving of evidence by a child complainant below the age of 14 years by means of closed circuit television or similar electronic media, immediately upon refusal and such reasons shall be entered into the record of the proceedings.

(Section 158(5) added by section 68 of Act 32 of 2007)

(Section 158 substituted by section 7 of Act 86 of 1996)

159. Circumstances in which criminal proceedings may take place in absence of accused

(1) If an accused at criminal proceedings conducts himself in a manner which makes the continuance of the proceedings in his presence impracticable, the court may direct that he be removed and that the proceedings continue in his absence.

(2) If two or more accused appear jointly at criminal proceedings and –

(a) the court is at any time after the commencement of the proceedings satisfied, upon application made to it by any accused in person or by his representative –

(i) that the physical condition of that accused is such that he is unable to attend the proceedings or that it is undesirable that he should attend the proceedings; or

(ii) that circumstances relating to the illness or death of a member of the family of that accused make his absence from the proceedings necessary; or

(b) any of the accused is absent from the proceedings, whether under the provisions of subsection (1) or without leave of the court,

the court, if it is of the opinion that the proceedings cannot be postponed without undue prejudice, embarrassment or inconvenience to the prosecution or any co-accused or any witness in attendance or subpoenaed to attend, may –

(aa) in the case of paragraph (a), authorize the absence of the accused concerned from the proceedings for a period determined by the court and on the conditions which the court may deem fit to impose; and

(bb) direct that the proceedings be proceeded with in the absence of the accused concerned.

(3) Where an accused becomes absent from the proceedings in the circumstances referred to in subsection (2), the court may, in lieu of directing that the proceedings be proceeded with in the absence of the accused concerned, upon the application of the prosecution direct that the proceedings in respect of the absent accused be separated from the proceedings in respect of the accused who are present, and thereafter, when such accused is again in attendance, the proceedings against him shall continue from the stage at which he became absent, and the court shall not be required to be differently constituted merely by reason of such separation.

(4) If an accused who is in custody in terms of an order of court cannot, by reason of his physical indisposition or other physical condition, be brought before a court for the purposes of obtaining an order for his further detention, the court before which the accused would have been brought for purposes of such an order if it were not for the indisposition or other condition, may, upon application made by the prosecution at any time prior to the expiry of the order for his detention wherein the circumstances surrounding the indisposition or other condition are set out, supported by a certificate from a medical practitioner, order, in the absence of such an accused, that he be detained at a place indicated by the court and for the period which the court deems necessary in order that he can recover and be brought before the court so that an order for his further detention for the purposes of his trial can be obtained.

(Section 159(4) added by section 9 of Act 5 of 1991)

159A. Postponement of certain criminal proceedings through audiovisual link

(1) For purposes of this section and sections 159B, 159C and 159D, unless the context indicates otherwise-

(a) **'appropriate person'** means any court official or any other person at the court point and remote point who is required to be, or may be, present at the proceedings, including the presiding officer, the prosecutor, the accused person's legal representative, any technical assistant, the clerk of the court, any witnesses, and members of the public who are entitled to be present;

(b) **'audio link'** means a live telephone link between the court point and the remote point which are both equipped with facilities which will enable audio communication between all appropriate persons at the court point and the remote point;

(c) **'audiovisual link'** means a live television link between the court point and the remote point which are both equipped with facilities which will enable all appropriate persons at the court point and the remote point to follow the proceedings and see and hear all the appropriate persons;

(d) **'court point'** means the courtroom or other place where the court having jurisdiction is sitting;

(e) **'correctional facility'** means a correctional facility as defined in the Correctional Services Act, 1998 (Act No. 111 of 1998), but does not include a police cell or lock-up; and

(f) **'remote point'** means the room or place at the designated correctional facility where the accused person appearing through audiovisial *[sic]* link is located.

(2) An accused person-

(a) who is over the age of 18 years;

(b) who is in custody in a correctional facility in respect of an offence;

(c) who has already appeared before a court;

(d) whose case has been postponed and who is in custody pending his or her trial; and

(e) who is required to appear or to be brought before a court in any subsequent proceedings (whether before, during or after the trial or conviction and sentence) for the purpose of-

(i) a further postponement of the case; or

(ii) consideration of release on bail in terms of section 60, 63, 63A, 307, 308A or 321, where the granting of bail is not opposed by the prosecutor or where the granting of bail does not require the leading of evidence,

is not required to appear or to be brought physically before the court but may, subject to the provisions of this section, sections 159B, 159C and 159D, appear before court by audiovisual link and is deemed to be physically before court, unless the court directs, in the interests of justice, that he or she appears or be brought physically before it.

(3) Any proceedings in terms of subsection (2) shall be regarded as having been held in the presence of the accused person if, during the proceedings, that person-

(a) is held in custody in a correctional facility; and

(b) is able to follow the court proceedings and the court is able to see and hear the accused person by means of audiovisual link.

(4) The remote point shall be regarded as being a part of the court.

(Section 159A inserted by section 1 of Act 65 of 2008 with effect from 1 October 2010 in respect of the magisterial districts of Bellville, Bloemfontein, Cape, Durban, Khayelitsha, Kroonstad, Kimberley, Klip River, Kuils River, Mitchells Plain, Nelspruit, Paarl, Pinetown, Port Elizabeth, Pretoria, Thohoyandou and Wynberg.)

(Section 159A inserted by section 1 of Act 65 of 2008 with effect from 15 February 2011 in respect of the magisterial district of Pietermaritzburg.)

(Section 159A inserted by section 1 of Act 65 of 2008 with effect from 31 October 2011 in respect of the magisterial district of Highveld Ridge.)

(Section 159A inserted by section 1 of Act 65 of 2008 with effect from 11 November 2011 in respect of the magisterial districts of Alberton, Benoni, Boksburg, East London, Germiston, Inanda, Johannesburg, Kempton Park, Krugersdorp, Mdantsane, Moretele, Mthata, Odi, Pietermaritzburg, Randburg, Roodepoort, Uitenhage, Umlazi, Vanderbijlpark, Vereeniging and Wonderboom.)

159B. Requirements for audiovisual appearance by accused person

(1) An accused person appearing before a court by audiovisual link must do so from a place at which the requirements referred to in subsections (2) and (3) and section 159C are complied with.

(2) The Minister may, subject to the provisions of this section, designate any correctional facility which has been suitably equipped as a place where proceedings in terms of section 159A can be held.

(3) Both the court point and the remote point in the correctional facility designated in terms of subsection (2) must be equipped with facilities that, in accordance with any requirements prescribed by regulations and any directions of the court referred to in section 159C, allow-

(a) private communication to take place between the accused person and any legal practitioner representing that person in the proceedings at the court point; and

(b) documents to be transmitted between both points by the persons referred to in paragraph (a)-

(i) at any time during the proceedings;

(ii) during any adjournment of the hearing in the proceedings referred to in paragraph (a); or

(iii) at any time on the day of a hearing, shortly before or after the hearing.

(4) The court must, at every appearance of an accused person in terms of section 159A, inquire into the physical and mental well-being of the accused person and for that purpose may, where necessary, direct that the facilities referred to in section 159C be used in such a manner which will enable the presiding officer to satisfy himself or herself as to the accused person's well-being as that presiding officer would be able to do if the accused person were physically before the court.

(Section 159B inserted by section 1 of Act 65 of 2008 with effect from 1 October 2010 in respect of the magisterial districts of Bellville, Bloemfontein, Cape, Durban, Khayelitsha, Kroonstad, Kimberley, Klip River, Kuils River, Mitchells Plain, Nelspruit, Paarl, Pinetown, Port Elizabeth, Pretoria, Thohoyandou and Wynberg.)

(Section 159B inserted by section 1 of Act 65 of 2008 with effect from 15 February 2011 in respect of the magisterial district of Pietermaritzburg.)

(Section 159B inserted by section 1 of Act 65 of 2008 with effect from 31 October 2011 in respect of the magisterial district of Highveld Ridge.)

(Section 159B inserted by section 1 of Act 65 of 2008 with effect from 11 November 2011 in respect of the magisterial districts of Alberton, Benoni, Boksburg, East London, Germiston, Inanda, Johannesburg, Kempton Park, Krugersdorp, Mdantsane, Moretele, Mthata, Odi, Pietermaritzburg, Randburg, Roodepoort, Uitenhage, Umlazi, Vanderbijlpark, Vereeniging and Wonderboom.)

159C. Technical requirements for use of audiovisual link

(1) For the purposes of proceedings in terms of section 159A, both the court point and the remote point must be equipped with facilities that enable all appropriate persons-

(a) at the court point to see and hear a person appearing before the court or making a submission or any other appropriate person at the remote point and to follow the proceedings; and

(b) at the remote point to see and hear all appropriate persons at the court point and to follow the proceedings.

(2)

(a) In the event of-

(i) an interruption of an audiovisual link;

(ii) an audiovisual link being of a poor quality which, in the opinion of the court, is not in the interests of justice to continue the proceedings by way of audiovisual link; or

(iii) any of the facilities referred to in subsection (1) malfunctioning,

the court must, subject to paragraph (b), direct that the matter stand down and cause the accused person to be brought physically before the court on the day in question.

(b) If it is not reasonably practicable to bring the accused person to court on the day, as provided for in paragraph (a), the court must, prior to the expiry of the existing court order for the accused person's detention, postpone the proceedings in the absence of the accused person, to the next court day.

(3) The Minister may make any regulations necessary to give effect to the technical requirements referred to in subsection (1).

(4) A court may, in order to ensure a fair trial, give any directions in any case as it may deem necessary, which may not be inconsistent with any provision of this Act or any regulation made thereunder.

(Section 159C inserted by section 1 of Act 65 of 2008 with effect from 1 October 2010 in respect of the magisterial districts of Bellville, Bloemfontein, Cape, Durban, Khayelitsha, Kroonstad, Kimberley, Klip River, Kuils River, Mitchells Plain, Nelspruit, Paarl, Pinetown, Port Elizabeth, Pretoria, Thohoyandou and Wynberg.)

(Section 159C inserted by section 1 of Act 65 of 2008 with effect from 15 February 2011 in respect of the magisterial district of Pietermaritzburg.)

(Section 159C inserted by section 1 of Act 65 of 2008 with effect from 31 October 2011 in respect of the magisterial district of Highveld Ridge.)

(Section 159C inserted by section 1 of Act 65 of 2008 with effect from 11 November 2011 in respect of the magisterial districts of Alberton, Benoni, Boksburg, East London, Germiston, Inanda, Johannesburg, Kempton Park, Krugersdorp, Mdantsane, Moretele, Mthata, Odi, Pietermaritzburg, Randburg, Roodepoort, Uitenhage, Umlazi, Vanderbijlpark, Vereeniging and Wonderboom.)

159D. Protection of communication between accused person and legal representative

Without limiting any other protection applying to it, a communication by audio link or audiovisual link, or a document transmitted between an accused person and his or her legal representative as provided for in section 159B(3), is confidential and inadmissible in any proceedings as if the communication took place or the document was produced while they were in the presence of each other.

(Section 159D inserted by section 1 of Act 65 of 2008 with effect from 1 October 2010 in respect of the magisterial districts of Bellville, Bloemfontein, Cape, Durban, Khayelitsha, Kroonstad, Kimberley, Klip River, Kuils River, Mitchells Plain, Nelspruit, Paarl, Pinetown, Port Elizabeth, Pretoria, Thohoyandou and Wynberg.)

(Section 159D inserted by section 1 of Act 65 of 2008 with effect from 15 February 2011 in respect of the magisterial district of Pietermaritzburg.)

(Section 159D inserted by section 1 of Act 65 of 2008 with effect from 31 October 2011 in respect of the magisterial district of Highveld Ridge.)

(Section 159D inserted by section 1 of Act 65 of 2008 with effect from 11 November 2011 in respect of the magisterial districts of Alberton, Benoni, Boksburg, East London, Germiston, Inanda, Johannesburg, Kempton Park, Krugersdorp, Mdantsane, Moretele, Mthata, Odi, Pietermaritzburg, Randburg, Roodepoort, Uitenhage, Umlazi, Vanderbijlpark, Vereeniging and Wonderboom.)

160. Procedure at criminal proceedings where accused is absent

(1) If an accused referred to in section 159(1) or (2) again attends the proceedings in question, he may, unless he was legally represented during his absence, examine any witness who testified during his absence, and inspect the record of the proceedings or require the court to have such record read over to him.

(2) If the examination of a witness under subsection (1) takes place after the evidence on behalf of the prosecution or any co-accused has been concluded, the prosecution or such co-accused may in respect of any issue raised by the examination, lead evidence in rebuttal of evidence relating to the issue so raised.

(3)

(a) When the evidence on behalf of all the accused, other than an accused who is absent from the proceedings, is concluded, the court shall, subject to the provisions of paragraph (b), postpone the proceedings until such absent accused is in attendance and, if necessary, further postpone the proceedings until the evidence, if any, on behalf of that accused has been led.

(b) If it appears to the court that the presence of an absent accused cannot reasonably be obtained, the court may direct that the proceedings in respect of the accused who are present be concluded as if such proceedings had been separated from the proceedings at the stage at which the accused concerned became absent from the proceedings, and when such absent accused is again in attendance, the proceedings against him shall continue from the stage at which he became absent, and the court shall not be required to be differently constituted merely by reason of such separation.

(c) When, in the case of a trial, the evidence on behalf of all the accused has been concluded and any accused is absent when the verdict is to be delivered, the verdict may be delivered in respect of all the accused or be withheld until all the accused are present or be delivered in respect of any accused present and withheld in respect of the absent accused until he is again in attendance.

161. Witness to testify *viva voce*

(1) A witness at criminal proceedings shall, except where this Act or any other law expressly provides otherwise, give his evidence *viva voce*.

(2) In this section the expression *"viva voce"* shall, in the case of a deaf and dumb witness, be deemed to include gesture-language and, in the case of a witness under the age of eighteen years, be deemed to include demonstrations, gestures or any other form of non-verbal expression.

(Section 161(2) substituted by section 1 of Act 135 of 1991)

162. Witness to be examined under oath

(1) Subject to the provisions of sections 163 and 164, no person shall be examined as a witness in criminal proceedings unless he is under oath, which shall be administered by the presiding judicial officer or, in the case of a superior court, by the presiding judge or the registrar of the court, and which shall be in the following form:-

"I swear that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God.".

(2) If any person to whom the oath is administered wishes to take the oath with uplifted hand, he shall be permitted to do so.

163. Affirmation in lieu of oath

(1) Any person who is or may be required to take the oath and-

(a) who objects to taking the oath;

(b) who objects to taking the oath in the prescribed form;

(c) who does not consider the oath in the prescribed form to be binding on his conscience; or

(d) who informs the presiding judge or, as the case may be, the presiding judicial officer, that he has no religious belief or that the taking of the oath is contrary to his religious belief,

shall make an affirmation in the following words in lieu of the oath and at the direction of the presiding judicial officer or, in the case of a superior court, the presiding judge or the registrar of the court:-

"I solemnly affirm that the evidence that I shall give, shall be the truth, the whole truth and nothing but the truth,".

(2) Such affirmation shall have the same legal force and effect as if the person making it had taken the oath.

(3) The validity of an oath duly taken by a witness shall not be affected if such witness does not on any of the grounds referred to in subsection (1) decline to take the oath.

164. When unsworn or unaffirmed evidence admissible

(1) Any person, who is found not to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in criminal proceedings without taking the oath or making the affirmation: Provided that such person shall, in lieu of the oath or affirmation, be admonished by the presiding judge or judicial officer to speak the truth.

(Section 164(1) substituted by section 68 of Act 32 of 2007)

(2) If such person wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury or any statutory offence punishable as perjury, he shall be deemed to have committed that offence, and shall, upon conviction, be liable to such punishment as is by law provided as a punishment for that offence.

165. Oath, affirmation or admonition may be administered by or through an interpreter or intermediary

Where the person concerned is to give his evidence through an interpreter or an intermediary appointed under section 170A(1), the oath, affirmation or admonition under section 162, 163 or 164 shall be administered by the presiding judge or judicial officer or the registrar of the court, as the case may be, through the interpreter or intermediary or by the interpreter or intermediary in the presence or under the eyes of the presiding judge or judicial officer, as the case may be.

(Section 165 substituted by section 2 of Act 135 of 1991)

166. Cross-examination and re-examination of witnesses

(1) An accused may cross-examine any witness called on behalf of the prosecution at criminal proceedings or any co-accused who testifies at criminal proceedings or any witness called on behalf of such co-accused at criminal proceedings, and the prosecutor may cross-examine any witness, including an accused, called on behalf of the defence at criminal proceedings, and a witness called at such proceedings on behalf of the prosecution may be re-examined by the prosecutor on any matter raised during the cross-examination of that witness, and a witness called on behalf of the defence at such proceedings may likewise be re-examined by the accused.

(2) The prosecutor and the accused may, with leave of the court, examine or cross-examine any witness called by the court at criminal proceedings.

(3)

(a) If it appears to a court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the court may request the cross-examiner to disclose the relevancy of any particular line of examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination.

(b) The court may order that any submission regarding the relevancy of the cross-examination be heard in the absence of the witness.

(Section 166(3) added by section 8 of Act 86 of 1996)

167. Court may examine witness or person in attendance.

The court may at any stage of criminal proceedings examine any person, other than an accused, who has been subpoenaed to attend such proceedings or who is in attendance at such proceedings, and may recall and re-examine any person, including an accused, already examined at the proceedings, and the court shall examine, or recall and re-examine, the person concerned if his evidence appears to the court essential to the just decision of the case.

168. Court may adjourn proceedings to any date

A court before which criminal proceedings are pending, may from time to time during such proceedings, if the court deems it necessary or expedient, adjourn the proceedings to any date on the terms which to the court may seem proper and which are not inconsistent with any provision of this Act.

169. Court may adjourn proceedings to any place

A court before which criminal proceedings are pending, may from time to time during such proceedings, if the court deems it necessary or expedient that the proceedings be continued at any place within its area of jurisdiction other than the one where the court is sitting, adjourn the proceedings to such other place, or, if the court with reference to any circumstance relevant to the proceedings deems it necessary or expedient that the proceedings be adjourned to a place other than the place at which the court is sitting, adjourn the proceedings, on the terms which to the court may seem proper, to any such place, whether within or outside the area of jurisdiction of such court, for the purpose of performing at such place any function of the court relevant to such circumstance.

(Section 169 substituted by section 19 of Act 59 of 1983)

170. Failure of accused to appear after adjournment or to remain in attendance

(1) An accused at criminal proceedings who is not in custody and who has not been released on bail, and who fails to appear at the place and on the date and at the time to which such proceedings may be adjourned or who fails to remain in attendance at such proceedings as so adjourned, shall be guilty of an offence and liable to the punishment prescribed under subsection (2).

(2) The court may, if satisfied that an accused referred to in subsection (1) has failed to appear at the place and on the date and at the time to which the proceedings in question were adjourned or has failed to remain in attendance at such proceedings as so adjourned, issue a warrant for his arrest and, when he is brought before the court, in a summary manner enquire into his failure so to appear or so to remain in attendance and, unless the accused satisfies the court that his failure was not due to fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 170(2) substituted by section 13 of Act 33 of 1986)

(Section 170 amended by section 11 of Act 56 of 1979)

(Section 170 substituted by section 5 of Act 109 of 1984)

170A. Evidence through intermediaries

(1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the biological or mental age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

(Section 170A(1) substituted by section 68 of Act 32 of 2007)

(2)

(a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), except examination by the court, shall take place in any manner other than through that intermediary.

(b) The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.

(3) If a court appoints an intermediary under subsection (1), the court may direct that the relevant witness shall give his or her evidence at any place--

(a) which is informally arranged to set that witness at ease;

(b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his or her testimony.

(4)

(a) The Minister may by notice in the *Gazette* determine the persons or the category or class of persons who are competent to be appointed as intermediaries.

(b) An intermediary who is not in the full-time employment of the State shall be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as the Minister, with the concurrence of the Minister of Finance, may determine.

(5)

(a) No oath, affirmation or admonition which has been administered through an intermediary in terms of section 165 shall be invalid and no evidence which has been presented through an intermediary shall be inadmissible solely on account of the fact that such intermediary was not competent to be appointed as an intermediary in terms of a regulation referred to in subsection (4)(a), at the time when such oath, affirmation or admonition was administered or such evidence was presented.

(b) If in any proceedings it appears to a court that an oath, affirmation or admonition was administered or that evidence has been presented through an intermediary who was appointed in good faith but, at the time of such appointment, was not qualified to be appointed as an intermediary in terms of a regulation referred to in subsection (4)(a), the court must make a finding as to the validity of that oath, affirmation or admonition or the admissibility of that evidence, as the case may be, with due regard to-

(i) the reason why the intermediary concerned was not qualified to be appointed as an intermediary, and the likelihood that the reason concerned will affect the reliability of the evidence so presented adversely;

(ii) the mental stress or suffering which the witness, in respect of whom that intermediary was appointed, will be exposed to if that evidence is to be presented anew, whether by the witness in person or through another intermediary; and

(iii) the likelihood that real and substantial justice will be impaired if that evidence is admitted.

(6)

(a) Subsection (5) does not prevent the prosecution from presenting anew any evidence which was presented through an intermediary referred to in that subsection.

(b) The provisions of subsection (5) shall also be applicable in respect of all cases where an intermediary referred to in that subsection has been appointed, and in respect of which, at the time of the commencement of that subsection-

(i) the trial court; or

(ii) the court considering an appeal or review, has not delivered judgment.

(7) The court shall provide reasons for refusing any application or request by the public prosecutor for the appointment of an intermediary in respect of child complainants below the age of 14 years, immediately upon refusal and such reasons shall be entered into the record of the proceedings.

(Section 170A(7) added by section 68 of Act 32 of 2007)

(8) An intermediary referred to in subsection (1) shall be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.

(Section 170A(8) added by section 68 of Act 32 of 2007)

(9) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court-

(a) is for any reason absent;

(b) becomes unable to act as an intermediary in the opinion of the court; or

(c) dies,

the court may, in the interests of justice and after due consideration of the arguments put forward by the accused person and the prosecutor-

(i) postpone the proceedings in order to obtain the intermediary's presence;

(ii) summons the intermediary to appear before the court to advance reasons for being absent;

(iii) direct that the appointment of the intermediary be revoked and appoint another intermediary; or

(iv) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary.

(Section 170A(9) added by section 68 of Act 32 of 2007)

(10) The court shall immediately give reasons for any direction or order referred to in subsection (9)(iv), which reasons shall be entered into the record of the proceedings.

(Section 170A(10) added by section 68 of Act 32 of 2007)

(Section 170A inserted by section 3 of Act 135 of 1991)
(Section 170A substituted by section 1 of Act 17 of 2001)

171. Evidence on commission

(1)

(a) Whenever criminal proceedings are pending before any court and it appears to such court on application made to it that the examination of any witness who is resident in the Republic is necessary in the interests of justice and that the attendance of such witness cannot be obtained without undue delay, expense or inconvenience the court may dispense with such attendance and issue a commission to any magistrate.

(Section 171(1)(a) substituted by section 36 of Act 75 of 1996)

(b) The specific matter with regard to which the evidence of the witness is required, shall be set out in the relevant application, and the court may confine the examination of the witness to such matter.

(c) Where the application is made by the State, the court may, as a condition of the commission, direct that the costs of legal representation for the accused at the examination be paid by the State.

(2)

(a) The magistrate to whom the commission is issued, shall proceed to the place where the witness is or shall summon the witness before him or her, and take down the evidence in the manner set out in paragraph (b).

(Section 171(2)(a) substituted by section 36 of Act 75 of 1996)

(b) The witness shall give his or her evidence upon oath or by affirmation, and such evidence shall be recorded and read over to the witness, and if he or she adheres thereto, be subscribed by him or her and the magistrate concerned.

(Section 171(2)(b) substituted by section 36 of Act 75 of 1996)

(c) ……

(Section 171(2)(c) deleted by section 36 of Act 75 of 1996)

172. Parties may examine witness

Any party to proceedings in which a commission is issued under section 171, may –

(a) transmit interrogatories in writing which the court issuing the commission may think relevant to the issue, and the magistrate to whom the commission is issued, shall examine the witness upon such interrogatories; or

(b) appear before such magistrate, either by a legal representative or, in the case of an accused who is not in custody or in the case of a private prosecutor, in person, and examine the witness.

(Section 172 substituted by section 36 of Act 75 of 1996)

173. Evidence on commission part of court record

The magistrate shall return the evidence in question to the court which issued the commission, and such evidence shall be open to the inspection of the parties to the proceedings and shall, in so far as it is admissible as evidence in such proceedings, form part of the record of such court.

(Section 173 substituted by section 36 of Act 75 of 1996)

174. Accused may be discharged at close of case for prosecution

If, at the close of the case for the prosecution at any trial, the court is of the opinion that there is no evidence that the accused committed the offence referred to in the charge or any offence of which he may be convicted on the charge, it may return a verdict of not guilty.

175. Prosecution and defence may address court at conclusion of evidence

(1) After all the evidence has been adduced, the prosecutor may address the court, and thereafter the accused may address the court.

(2) The prosecutor may reply on any matter of law raised by the accused in his address, and may, with leave of the court, reply on any matter of fact raised by the accused in his address.

176. Judgment may be corrected

When by mistake a wrong judgment is delivered, the court may, before or immediately after it is recorded, amend the judgment.

177. Court may defer final decision

The court may at criminal proceedings defer its reasons for any decision on any question raised at such proceedings, and the reasons so deferred shall, when given, be deemed to have been given at the time of the proceedings.

178. Arrest of person committing offence in court and removal from court of person disturbing proceedings

(1) Where an offence is committed in the presence of the court, the presiding judge or judicial officer may order the arrest of the offender.

(2) If any person, other than an accused, who is present at criminal proceedings, disturbs the peace or order of the court, the court may order that such person be removed from the court and that he be detained in custody until the rising of the court.

CHAPTER 23
WITNESSES

179. Process for securing attendance of witness

(1)

(a) The prosecutor or an accused may compel the attendance of any person to give evidence or to produce any book, paper or document in criminal proceedings by taking out of the office prescribed by the rules of court the process of court for that purpose.

(b) If any police official has reasonable grounds for believing that the attendance of any person is or will be necessary to give evidence or to produce any book, paper or document in criminal proceedings in a lower court, and hands to such person a written notice calling upon him to attend such criminal proceedings on the date and at the time and place specified in the notice, to give evidence or to produce any book, paper or document, likewise specified, such person shall, for the purposes of this Act, be deemed to have been duly subpoenaed so to attend such criminal proceedings.

(2) Where an accused desires to have any witness subpoenaed, a sum of money sufficient to cover the costs of serving the subpoena shall be deposited with the prescribed officer of the court.

(3)

(a) Where an accused desires to have any witness subpoenaed and he satisfies the prescribed officer of the court –

(i) that he is unable to pay the necessary costs and fees; and

(ii) that such witness is necessary and material for his defence, such officer shall subpoena such witness.

(b) In any case where the prescribed officer of the court is not so satisfied, he shall, upon the request of the accused, refer the relevant application to the judge or judicial officer presiding over the court, who may grant or refuse the application or defer his decision until he has heard other evidence in the case.

(4) For the purposes of this section "prescribed officer of the court" means the registrar, assistant registrar, clerk of the court or any officer prescribed by the rules of court.

180. Service of subpoena

(1) A subpoena in criminal proceedings shall be served in the manner provided by the rules of court by a person empowered to serve a subpoena in criminal proceedings.

(2) A return by the person empowered to serve a subpoena in criminal proceedings, that the service thereof has been duly effected, may, upon the failure of a witness to attend the relevant proceedings, be handed in at such proceedings and shall be *prima facie* proof of such service.

181. Pre-payment of witness expenses

Where a subpoena is served on a witness at a place outside the magisterial district from which the subpoena is issued, or, in the case of a superior court, at a place outside the magisterial district in which the proceedings at which the witness is to appear are to take place, and the witness is required to travel from such place to the court in question, the necessary expenses to travel to and from such court and of sojourn at the court in question, shall on demand be paid to such witness at the time of service of the subpoena.

182. Witness from prison

A prisoner who is in a prison shall be subpoenaed as a witness on behalf of the defence or a private prosecutor only if the court before which the prisoner is to appear as a witness authorizes that the prisoner be subpoenaed as a witness, and the court shall give such authority only if it is satisfied that the evidence in question is necessary and material for the defence or the private prosecutor, as the case may be, and that the public safety or order will not be endangered by the calling of the witness.

183. Witness to keep police informed of whereabouts

(1) Any person who is advised in writing by any police official that he will be required as a witness in criminal proceedings, shall, until such criminal proceedings have been finally disposed of or until he is officially advised that he will no longer be required as a witness, keep such police official informed at all times of his full residential address or any other address where he may conveniently be found.

(2) Any person who fails to comply with the provisions of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 183(2) substituted by section 14 of Act 33 of 1986)

184. Witness about to abscond and witness evading service of summons

(1) Whenever any person is likely to give material evidence in criminal proceedings with reference to any offence, other than an offence referred to in Part III of Schedule 2 any magistrate, regional magistrate or judge of the court before which the relevant proceedings are pending may, upon information in writing and on oath that such person is about to abscond, issue a warrant for his arrest.

(Section 184(1) substituted by section 3 of Act 126 of 1992)

(2) If a person referred to in subsection (1) is arrested, the magistrate, regional magistrate or judge, as the case may be, may warn him to appear at the proceedings in question at a stated place and at a stated time and on a stated date and release him on any condition referred to in paragraph (a), (b) or (e) of section 62, in which event the provisions of subsections (1), (3) and (4) of section 66 shall *mutatis mutandis* apply with reference to any such condition.

(3)

(a) A person who fails to comply with a warning under subsection (2) shall be guilty of an offence and liable to the punishment contemplated in paragraph (b) of this subsection.

(b) The provisions of section 170(2) shall *mutatis mutandis* apply with reference to any person who is guilty of an offence under paragraph (a) of this subsection.

(4) Whenever any person is likely to give material evidence in criminal proceedings, any magistrate, regional magistrate or judge of the court before which the relevant proceedings are pending may, upon information in writing and on oath that such person is evading service of the relevant subpoena, issue a warrant for his arrest, whereupon the provisions of subsections (2) and (3) shall *mutatis mutandis* apply with reference to such person.

185. Detention of witness

(1)

(a) Whenever any person is with reference to any offence referred to in Part III of Schedule 2 in the opinion of the attorney-general likely to give evidence on behalf of the State at criminal proceedings in any court, and the attorney-general, from information placed before him –

(i) is of the opinion that the personal safety of such person is in danger or that he may abscond· or that he may be tampered with or that he may be intimidated; or

(ii) deems it to be in the interests of such person or of the administration of justice that he be detained in custody,

the attorney-general may by way of affidavit place such information before a judge in chambers and apply to such judge for an order that the person concerned be detained pending the relevant proceedings.

(b) The attorney-general may in any case in which he is of the opinion that the object of obtaining an order under paragraph (a) may be defeated if the person concerned is not detained without delay, order that such person be detained forthwith but such order shall not endure for longer than seventy-two hours unless the attorney-general within that time by way of affidavit places before a judge in chambers the information on which he ordered the detention of the person concerned and such further information as might become available to him, and applies to such judge for an order that the person concerned be detained pending the relevant proceedings.

(c) The attorney-general shall, as soon as he applies to a judge under paragraph (b) for an order of detention, ill writing advise the person in charge of the place where the person concerned is being detained, that he has so applied for an order, and shall, where a judge under subsection (2)(a) refuses to issue a warrant for the detention of the person concerned, forthwith advise the person so in charge of such refusal, whereupon the person so in charge shall without delay release the person detained.

(2)

(a) The judge hearing the application under subsection (1) may, if it appears to him from the information placed before him by the attorney-general –

(i) that there is a danger that the personal safety of the person concerned may be threatened or that he may abscond or that he may be tampered with or that he may be intimidated; or

(ii) that it would be in the interests of the person concerned or of the administration of justice that he be detained in custody,

issue a warrant for the detention of such person.

(b) The decision of a judge under paragraph (a) shall be final: Provided that where a judge refuses an application and further information becomes available to the attorney-general concerning the person in respect of whom the application was refused, the attorney-general may again apply under subsection (1)(a) for the detention of that person.

(3) A person in respect of whom a warrant is issued under subsection (2), shall be taken to the place mentioned in the warrant and, in accordance with regulations which the Minister is hereby authorized to make, be detained there or at any other place determined by any judge from time to time, or, where the person concerned is detained in terms of an order by the attorney-general under subsection (1)(b), such person shall, pending the decision of the judge under subsection (2)(a), be taken to a place determined by the attorney-general and detained there in accordance with the said regulations.

(4) Any person detained under a warrant in terms of subsection (2) shall be detained for the period terminating on the day on which the criminal proceedings concerned are concluded, unless –

(a) the attorney-general orders that he be released earlier; or

(b) such proceedings have not commenced within six months from the date on which he is so detained, in which case he shall be released after the expiration of such period.

(Section 185(4) substituted by section 2 of Act 79 of 1978)

(5) No person, other than an officer in the service of the State acting in the performance of his official duties, shall have access to a person detained under subsection (2), except with the consent of and subject to the conditions determined by the attorney-general or an officer in the service of the State delegated by him.

(6) Any person detained under subsection (2) shall be visited in private at least once during each week by a magistrate of the district or area in which he is detained.

(7) For the purposes of section 191 any person detained under subsection (2) of this section shall be deemed to have attended the criminal proceedings in question as a witness for the State during the whole of the period of his detention.

(8) …….

(Section 185(8) deleted by section 68 of Act 88 of 1996)

(9)

(a) In this section the expression “judge in chambers” means a judge sitting behind closed doors when hearing the relevant application.

(b) No information relating to the proceedings under subsection (1) or (2) shall be published or be made public in any manner whatever.

185A. …….

(Section 185A inserted by section 4 of Act 135 of 1991)

(Section 185A repealed by section 24 of Act 112 of 1998)

186. Court may subpoena witness

The court may at any stage of criminal proceedings subpoena or cause to be subpoenaed any person as a witness at such proceedings, and the court shall so subpoena a witness or so cause a witness to be subpoenaed if the evidence of such witness appears to the court essential to the just decision of the case.

187. Witness to attend proceedings and to remain in attendance

A witness who is subpoenaed to attend criminal proceedings, shall attend the proceedings and remain in attendance at the proceedings, and a person who is in attendance at criminal proceedings, though not subpoenaed as a witness, and who is warned by the court to remain in attendance at the proceedings, shall remain in attendance at the proceedings, unless such witness or such person is excused by the court: Provided that the court may, at any time during the proceedings in question, order that any person, other than the accused, who is to be called as a witness, shall leave the court and remain absent from the proceedings until he is called, and that he shall remain in court after he has given evidence.

188. Failure by witness to attend or to remain in attendance

(1) Any person who is subpoenaed to attend criminal proceedings and who fails to attend or to remain in attendance at such proceedings, and any person who is warned by the court to remain in attendance at criminal proceedings and who fails to remain in attendance at such proceedings, and any person so subpoenaed or so warned who fails to appear at the place and on the date and at the time to which the proceedings in question may be adjourned or who fails to remain in attendance at such proceedings as so adjourned, shall be guilty of an offence and liable to the punishment contemplated in subsection (2).

(Section 188(1) substituted by section 6 of Act 109 of 1984)

(2) The provisions of section 170(2) shall *mutatis mutandis* apply with reference to any person referred to in subsection (1).

189. Powers of court with regard to recalcitrant witness

(1) If any person present at criminal proceedings is required to give evidence at such proceedings and refuses to be sworn or to make an affirmation as a witness, or, having been sworn or having made an affirmation as a witness, refuses to answer any question put to him or refuses or fails to produce any

book, paper or document required to be produced by him, the court may in a summary manner enquire into such refusal or failure and, unless the person so refusing or failing has a just excuse for his refusal or failure, sentence him to imprisonment for a period not exceeding two years or, where the criminal proceedings in question relate to an offence referred to in Part III of Schedule 2, to imprisonment for a period not exceeding five years.

(Section 189(1) substituted by section 20 of Act 59 of 1983)

(Section 189(1) substituted by section 4 of Act 126 of 1992)

(2) After the expiration of any sentence imposed under subsection (1), the person concerned may from time to time again be dealt with under that subsection with regard to any further refusal or failure.

(3) A court may at any time on good cause shown remit any punishment or part thereof imposed by it under subsection (1).

(4) Any sentence imposed by any court under subsection (1) shall be executed and be subject to appeal in the same manner as a sentence imposed in any criminal case by such court, and shall be served before any other sentence of imprisonment imposed on the person concerned.

(5) The court may, notwithstanding any action taken under this section, at any time conclude the criminal proceedings referred to in subsection (1).

(6) No person shall be bound to produce any book, paper or document not specified in any subpoena served upon him, unless he has such book, paper or document in court.

(7) Any lower court shall have jurisdiction to sentence any person to the maximum period of imprisonment prescribed by this section.

190. Impeachment or support of credibility of witness

(1) Any party may in criminal proceedings impeach or support the credibility of any witness called against or on behalf of such party in any manner in which and by any evidence by which the credibility of such witness might on the thirtieth day of May, 1961, have been impeached or supported by such party.

(2) Any such party who has called a witness who has given evidence in any such proceedings (whether that witness is or is not, in the opinion of the court, adverse to the party calling him), may, after such party or the court has asked the witness whether he did or did not previously make a statement with which his evidence in the said proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made have been given to the witness, prove that he previously made a statement with which such evidence is inconsistent.

191. Payment of expenses of witness

(1) Any person who attends criminal proceedings as a witness for the State shall be entitled to such allowance as may be prescribed under subsection (3): Provided that the judicial officer or the judge presiding at such proceedings may, if he thinks fit, direct that no such allowance or that only a part of such allowance shall be paid to any such witness.

(2) Subject to any regulation made under subsection (3), the judicial officer or the judge presiding at criminal proceedings may, if he thinks fit, direct that any person who has attended such proceedings as a witness for the accused, shall be paid such allowance as may be prescribed by such regulation, or such lesser allowance as such judicial officer or such judge may determine.

(3) The Minister may, in consultation with the Minister of Finance, by regulation prescribe a tariff of allowances which may be paid out of public moneys to witnesses in criminal proceedings, and may by regulation prescribe different tariffs for witnesses according to their several callings, occupations or stations in life, and according also to the distances to be travelled by such witnesses to reach the place where the proceedings in question are to take place, and may by regulation further prescribe the circumstances in which such allowances may be paid to any witness for an accused.

(4) The Minister may under subsection (3) empower any officer in the service of the State to authorize, in any case in which the payment of an allowance in accordance with the tariff prescribed may cause undue hardship or in the case of any person resident outside the Republic, the payment of an allowance in accordance with a higher tariff than the tariff prescribed.

(5) For the purposes of this section “witness” shall include any person necessarily required to accompany any witness on account of his youth, old age or infirmity.

191A. Witness services

(1) The Minister has the power to determine services to be provided to a witness who is required to give evidence in any court of law.

(2) The Minister may make regulations relating to-

(a) the assistance of, and support to, witnesses at courts;

(b) the establishment of reception centres for witnesses at courts;

(c) the counselling of witnesses; and

(d) any other matter which the Minister deems expedient to prescribe in order to provide services to witnesses at courts.

(3) Any regulation made under this section which may result in financial expenditure for the State must be made in consultation with the Minister of Finance.

(4) Any regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three years.

(5) Any regulation made under this section must, before publication thereof in the Gazette, be submitted to Parliament.

(Section 191A inserted by section 25 of Act 112 of 1998)

192. Every witness competent and compellable unless expressly excluded

Every person not expressly excluded by this Act from giving evidence shall, subject to the provisions of section 206, be competent and compellable to give evidence in criminal proceedings.

193. Court to decide upon competency of witness

The court in which criminal proceedings are conducted shall decide any question concerning the competency or compellability of any witness to give evidence.

194. Incompetency due to state of mind

No person appearing or proved to be afflicted with mental illness or to be labouring under any imbecility of mind due to intoxication or drugs or the like, and who is thereby deprived of the proper use of his reason, shall be competent to give evidence while so afflicted or disabled.

195. Evidence for prosecution by husband or wife of accused

(1) The wife or husband of an accused shall be competent, but not compellable, to give evidence for the prosecution in criminal proceedings, but shall be competent and compellable to give evidence for the prosecution at such proceedings where the accused is charged with –

(a) any offence committed against the person of either of them or of a child of either of them or of a child that is in the care of either of them;

(b) any offence under Chapter 8 of the Child Care Act, 1983 (Act 74 of 1983), committed in respect of any child of either of them;

(c) any contravention of any provision of section 31(1) of the Maintenance Act, 1998, or of such provision as applied by any other law;

(d) bigamy;

(e) incest as contemplated in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(f) abduction;

(g) any contravention of any provision of section 2, 8, 10, 12, 12A, 17 or 20 of the Sexual Offences Act, 1957 (Act 23 of 1957);

(gA) any contravention of any provision of section 17 or 23 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(h) perjury committed in connection with or for the purpose of any judicial proceedings instituted or to be instituted or contemplated by the one of them against the other, or in connection with or for the purpose of criminal proceedings in respect of any offence included in this subsection;

(i) the statutory offence of making a false statement in any affidavit or any affirmed, solemn or attested declaration if it is made in connection with or for the purpose of any such proceedings as are mentioned in paragraph (h).

(Section 195(1) amended by section 5 of Act 72 of 1985)
(Section 195(1) amended by section 7 of Act 26 of 1987)
(Section 195(1) substituted by section 6 of Act 45 of 1988)
(Section 195(1) amended by section 1 of Act 49 of 1996)
(Section 195(1) amended by section 4 of Act 18 of 1996)
(Section 195(1) amended by section 45 of Act 99 of 1998)
(Section 195(1) substituted by section 68 of Act 32 of 2007)

(2) For the purposes of the law of evidence in criminal proceedings, 'marriage' shall include a customary marriage or customary union concluded under the indigenous law and custom of any of the indigenous peoples of the Republic of South Africa or any marriage concluded under any system of religious law.

(Section 195(2) substituted by section 4 of Act 18 of 1996)

196. Evidence of accused and husband or wife on behalf of accused

(1) An accused and the wife or husband of an accused shall be a competent witness for the defence at every stage of criminal proceedings, whether or not the accused is charged jointly with any other person: Provided that –

(a) an accused shall not be called as a witness except upon his own application;

(b) the wife or husband of an accused shall not be a compellable witness where a co-accused calls that wife or husband as a witness for the defence.

(Section 196(1)(b) substituted by section 7 of Act 45 of 1988)

(2) The evidence which an accused may, upon his own application, give in his own defence at joint criminal proceedings, shall not be inadmissible against a co-accused at such proceedings by reason only that such accused is for any reason not a competent witness for the prosecution against such co-accused.

(3) An accused may not make an unsworn statement at his trial in lieu of evidence but shall, if he wishes to give evidence, do so on oath or, as the case may be, by affirmation.

197. Privileges of accused when giving evidence

An accused who gives evidence at criminal proceedings shall not be asked or required to answer any question tending to show that he has committed or has been convicted of or has been charged with any offence other than the offence with which he is charged, or that he is of bad character, unless –

(a) he or his legal representative asks any question of any witness with a view to establishing his own good character or he himself gives evidence of his own good character, or the nature or conduct of the defence is such as to involve imputation of the character of the complainant or any other witness for the prosecution;

(b) he gives evidence against any other person charged with the same offence or an offence in respect of the same facts;

(c) the proceedings against him are such as are described in section 240 or 241 and the notice under those sections has been given to him; or

(d) the proof that he has committed or has been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is charged.

198. Privilege arising out of marital state

(1) A husband shall not at criminal proceedings be compelled to disclose any communication which his wife made to him during the marriage, and a wife shall not at criminal proceedings be compelled to disclose any communication which her husband made to her during the marriage.

(2) Subsection (1) shall also apply to a communication made during the subsistence of a marriage or a putative marriage which has been dissolved or annulled by a competent court.

(Section 198(2) substituted by section 8 of Act 45 of 1988)

199. No witness compelled to answer question which the witness's husband or wife may decline

No person shall at criminal proceedings be compelled to answer any question or to give any evidence, if the question or evidence is such that under the circumstances the husband or wife of such person, if under examination as a witness, may lawfully refuse and cannot be compelled to answer or to give it.

200. Witness not excused from answer establishing civil liability on his part

A witness in criminal proceedings may not refuse to answer any question relevant to the issue by reason only that the answer establishes or may establish a civil liability on his part.

201. Privilege of legal practitioner

No legal practitioner qualified to practise in any court, whether within the Republic or elsewhere, shall be competent, without the consent of the person concerned, to give evidence at criminal proceedings against any person by whom he is professionally employed or consulted as to any fact, matter or thing with regard to which such practitioner would not on the thirtieth day of May, 1961, by reason of such employment or consultation, have been competent to give evidence without such consent: Provided that such legal practitioner shall be competent and compellable to give evidence as to any fact, matter or thing which relates to or is connected with the commission of any offence with which the person by whom such legal practitioner is professionally employed or consulted, is charged, if such fact, matter or thing came to the knowledge of such legal practitioner before he was professionally employed or consulted with reference to the defence of the person concerned.

202. Privilege from disclosure on ground of public policy or public interest

Except as is in this Act provided and subject to the provisions of any other law, no witness in criminal proceedings shall be compellable or permitted to give evidence as to any fact, matter or thing or as to any communication made to or by such witness, if such witness would on the thirtieth day of May, 1961, not have been compellable or permitted to give evidence with regard to such fact, matter or thing or communication by reason that it should not, on the grounds of public policy or from regard to public interest, be disclosed, and that it is privileged from disclosure: Provided that any person may in criminal proceedings adduce evidence of any communication alleging the commission of an offence, if the making of that communication *prima facie* constitutes an offence, and the judge or judicial officer presiding at such proceedings may determine whether the making of such communication *prima facie* does or does not constitute an offence, and such determination shall, for the purpose of such proceedings, be final.

203. Witness excused from answering incriminating question

No witness in criminal proceedings shall, except as provided by this Act or any other law, be compelled to answer any question which he would not on the thirtieth day of May, 1961, have been compelled to answer by reason that the answer may expose him to a criminal charge.

204. Incriminating evidence by witness for prosecution

(1) Whenever the prosecutor at criminal proceedings informs the court that any person called as a witness on behalf of the prosecution will be required by the prosecution to answer questions which may incriminate such witness with regard to an offence specified by the prosecutor –

(a) the court, if satisfied that such witness is otherwise a competent witness for the prosecution, shall inform such witness –

(i) that he is obliged to give evidence at the proceedings in question;

(ii) that questions may be put to him which may incriminate him with regard to the offence specified by the prosecutor;

(iii) that he will be obliged to answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the answer may incriminate him with regard to the offence so specified or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified;

(iv) that if he answers frankly and honestly all questions put to him, he shall be discharged from prosecution with regard to the offence so specified and with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) such witness shall thereupon give evidence and answer any question put to him, whether by the prosecution, the accused or the court, notwithstanding that the reply thereto may incriminate him with regard to the offence so specified by the prosecutor or with regard to any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified.

(2) If a witness referred to in subsection (1), in the opinion of the court, answers frankly and honestly all questions put to him –

(a) such witness shall, subject to the provisions of subsection (3), be discharged from prosecution for the offence so specified by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offence so specified; and

(b) the court shall cause such discharge to be entered on the record of the proceedings in question.

(3) The discharge referred to in subsection (2) shall be of no legal force or effect if it is given at preparatory examination proceedings and the witness concerned does not at any trial arising out of such preparatory examination, answer, in the opinion of the court, frankly and honestly all questions put to him at such trial, whether by the prosecution, the accused or the court.

(4)

(a) Where a witness gives evidence under this section and is not discharged from prosecution in respect of the offence in question, such evidence shall not be admissible in evidence against him at any trial in respect of such offence or any offence in respect of which a verdict of guilty is competent upon a charge relating to such offence.

(b) The provisions of this subsection shall not apply with reference to a witness who is prosecuted for perjury arising from the giving of the evidence in question, or for a contravention of section 319(3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(Section 204(4)(b) amended by section 1 of Act 49 of 1996)

205. Judge, regional court magistrate or magistrate may take evidence as to alleged offence

(1) A judge of a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4) and section 15 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorized thereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the Director of Public Prosecutions or public prosecutor concerned prior to the date on which he or she is required to appear before a judge, regional court magistrate or magistrate, he or she shall be under no further obligation to appear before a judge, regional court magistrate or magistrate.

(Section 205(1) substituted by section 59 of Act 70 of 2002)

(2) The provisions of sections 162 to 165 inclusive, 179 to 181 inclusive, 187 to 189 inclusive, 191 and 204 shall *mutatis mutandis* apply with reference to the proceedings under subsection (1).

(3) The examination of any person under subsection (1) may be conducted in private at any place designated by the judge, regional court magistrate or magistrate.

(4) A person required in terms of subsection (1) to appear before a judge, a regional court magistrate or a magistrate for examination, and who refuses or fails to give the information contemplated in subsection (1), shall not be sentenced to imprisonment as contemplated in section 189 unless the

judge, regional court magistrate or magistrate concerned, as the case may be, is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.

(Section 205 substituted by section 11 of Act 204 of 1993)

206. The law in cases not provided for

The law as to the competency, compellability or privilege of witnesses which was in force in respect of criminal proceedings on the thirtieth day of May, 1961, shall apply in any case not expressly provided for by this Act or any other law.

207. Saving of special provisions in other laws

No provision of this Chapter· shall be construed as modifying any provision of any other law whereby in any criminal proceedings referred to in such law a person is deemed a competent witness.

CHAPTER 24
EVIDENCE

208. Conviction may follow on evidence of single witness

An accused may be convicted of any offence on the single evidence of any competent witness.

209. Conviction may follow on confession by accused

An accused may be convicted of any offence on the single evidence of a confession by such accused that he committed the offence in question, if such confession is confirmed in a material respect or, where the confession is not so confirmed, if the offence is proved by evidence, other than such confession, to have been actually committed.

210. Irrelevant evidence inadmissible

No evidence as to any fact, matter or thing shall be admissible which is irrelevant or immaterial and which cannot conduce to prove or disprove any point or fact at issue in criminal proceedings.

211. Evidence during criminal proceedings of previous convictions

Except where otherwise expressly provided by this Act or the Child Justice Act, 2008, or except where the fact of a previous conviction is an element of any offence with which an accused is charged, evidence shall not be admissible at criminal proceedings in respect of any offence to prove that an accused at such proceedings had previously-been convicted of any offence, whether in the Republic

or elsewhere, and no accused, if called as a witness, shall be asked whether he or she has been so convicted.

(Section 211 substituted by section 99(1) of Act 75 of 2008)

212. Proof of certain facts by affidavit or certificate

(1) Whenever in criminal proceedings the question arises whether any particular act, transaction or occurrence did or did not take place in any particular department or sub-department of the State or of a provincial administration or in any branch or office of such department or sub-department or in any particular court of law or in any particular bank, or the question arises in such proceedings whether any particular functionary in any such department, sub-department, branch or office did or did not perform any particular act or did or did not take part in any particular transaction, a document purporting to be an affidavit made by a person who in that affidavit alleges –

(a) that he is in the service of the State or a provincial administration or of the bank in question, and that he is employed in the particular department or sub-department or the particular branch or office thereof or in the particular court or bank;

(b) that –

(i) if the act, transaction or occurrence in question had taken place in such department, sub-department, branch or office or in such court or bank; or

(ii) if such functionary had performed such particular act or had taken part in such particular transaction, it would in the ordinary course of events have come to his, the deponent's, knowledge and a record thereof, available to him, would have been kept; and

(c) that it has not come to his knowledge –

(i) that such act, transaction or occurrence took place; or

(ii) that such functionary performed such act or took part in such transaction, and that there is no record thereof,

shall, upon its mere production at such proceedings, be *prima facie* proof that the act, transaction or occurrence in question did not take place or, as the case may be, that the functionary concerned did not perform the act in question or did not take part in the transaction in question.

(2) Whenever in criminal proceedings the question arises whether any person bearing a particular name did or did not furnish any particular officer in the service of the State or of a provincial administration with any particular information or document, a document purporting to be an affidavit made by a

person who in that affidavit alleges that he is the said officer and that no person bearing the said name furnished him with such information or document, shall, upon its mere production at such proceedings, be *prima facie* proof that the said person did not furnish the said officer with any such information or document.

(3) Whenever in criminal proceedings the question arises whether any matter has been registered under any law or whether any fact or transaction has been recorded thereunder or whether anything connected therewith has been done thereunder, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is the person upon whom the law in question confers the power or imposes the duty to register such matter or to record such fact or transaction or to do such thing connected therewith and that he has registered the matter in question or that he has recorded the fact or transaction in question or that he has done the thing connected therewith or that he has satisfied himself that the matter in question was registered or that the fact or transaction in question was recorded or that the thing connected therewith was done, shall, upon its mere production at such proceedings, be *prima facie* proof that such matter was registered or, as the case may be, that such fact or transaction was recorded or that the thing connected therewith was done.

(Section 212(3) substituted by section 12 of Act 56 of 1979)

(4)

(a) Whenever any fact established by any examination or process requiring any skill –

(i) in biology, chemistry, physics, astronomy, geography or geology;

(ii) in mathematics, applied mathematics or mathematical statistics or in the analysis of statistics;

(iii) in computer science or in any discipline of engineering;

(iv) in anatomy or in human behavioural sciences;

(v) in biochemistry, in metallurgy, in microscopy, in any branch of pathology or in toxicology; or

(vi) in ballistics, in the identification of fingerprints or body-prints or in the examination of disputed documents,

is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he or she is in the service of the State or of a provincial administration or any university in the Republic or any other body designated by the Minister for the purposes of this subsection by notice in the *Gazette*, and that he or she has established such fact by means of such an examination or process, shall, upon its mere production at such proceedings be *prima facie* proof of such fact: Provided that the person

who may make such affidavit may, in any case in which skill is required in chemistry, anatomy or pathology, issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall *mutatis mutandis* apply with reference to such certificate.

(Section 212(4)(a) amended by sections 46 and 47 of Act 97 of 1986)

(Section 212(4)(a) amended by section 40 of Act 122 of 1991)

(Section 212(4)(a) amended by section 9 of Act 86 of 1996)

(Section 212(4)(a) substituted by section 6 of Act 34 of 1998)

(Section 212(4)(a) substituted by section 4(a) of Act 6 of 2010)

(b) Any person who issues a certificate under paragraph (a) and who in such certificate wilfully states anything which is false, shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(5) Whenever the question as to the existence and nature of a precious metal or any precious stone is or may become relevant to the issue in criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is an appraiser of precious metals or precious stones; that he is in the service of the State, that such precious metal or such precious stone is indeed a precious metal or a precious stone, as the case may be, that it is a precious metal or a precious stone of a particular kind and appearance and that the mass or value of such precious metal or such precious stone is as specified in that affidavit, shall, upon its mere production at such proceedings, be *prima facie* proof that it is a precious metal or a precious stone of a particular kind and appearance and the mass or value of such precious metal or such precious stone is as so specified.

(Section 212(5) substituted by section 11 of Act 5 of 1991)

(6) In criminal proceedings in which the finding of or action taken in connection with any particular fingerprint or body-print is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges that he or she is in the service of the State and that he or she in the performance of his or her official duties-

(a) found such fingerprint or body-print at or in the place or on or in the article or in the position or circumstances stated in the affidavit; or

(b) dealt with such fingerprint or body-print in the manner stated in the affidavit, shall, upon the mere production thereof at such proceedings, be *prima facie* proof that such fingerprint or body-print, was so found or, as the case may be, was so dealt with.

(Section 212(6) substituted by section 4(b) of Act 6 of 2010)

(7) In criminal proceedings in which the physical condition or the identity, in or at any hospital, nursing home, ambulance or mortuary, of any deceased person or of any dead body is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges –

(a) that he is employed at or in connection with the hospital, nursing home, ambulance or mortuary in question; and

(b) that he during the performance of his official duties observed the physical characteristics or condition of the deceased person or of the dead body in question; and

(c) that while the deceased person or the dead body in question was under his care, such deceased person or such dead body had or sustained the injuries or wounds described in the affidavit, or sustained no injuries or wounds; or

(d) that he pointed out or handed over the deceased person or the dead body in question to a specified person or that he left the deceased person or the dead body in question in the care of a specified person or that the deceased person or the dead body in question was pointed out or handed over to him or left in his care by a specified person,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged.

(8)

(a) In criminal proceedings in which the receipt, custody, packing, marking, delivery or despatch of any fingerprint or body-print, article of clothing, specimen, tissue (as defined in section 1 of the National Health Act, 2003 (Act No. 61 of 2003), or any object of whatever nature is relevant to the issue, a document purporting to be an affidavit made by a person who in that affidavit alleges –

(i) that he or she is in the service of the State or of a provincial administration, any university in the Republic or any body designated by the Minister under subsection (4);

(ii) that he or she in the performance of his or her official duties –

(aa) received from any person, institute, State department or body specified in the affidavit, a fingerprint or body-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he or she packed, or marked in the manner described in the affidavit;

(bb) delivered or despatched to any person, institute, State department or body specified in the affidavit, a fingerprint or body-print, article of clothing, specimen, tissue or object described in the affidavit, which was packed or marked or, as the case may be, which he or she packed or marked in the manner described in the affidavit;

(cc) during a period specified in the affidavit, had a fingerprint or body-print, article of clothing, specimen, tissue or object described in the affidavit in his or her custody in the manner described in the affidavit, which was packed or marked in the manner described in the affidavit,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged: Provided that the person who may make such affidavit in any case relating to any article of clothing, specimen or tissue, may issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall *mutatis mutandis* apply with reference to such certificate.

(Section 212(8)(a) amended by section 46 of Act 97 of 1986)
(Section 212(8)(a) substituted by section 4(c) of Act 6 of 2010)

(b) Any person who issues a certificate under paragraph (a) and who in such certificate wilfully states anything which is false, shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(9) In criminal proceedings in which it is relevant to prove –

(a) the details of any consignment of goods delivered to the Railways Administration for conveyance to a specified consignee, a document purporting to be an affidavit made by a person who in that affidavit alleges –

(i) that he consigned the goods set out in the affidavit to a consignee specified in the affidavit;

(ii) that, on a date specified in the affidavit, he delivered such goods or caused such goods to be delivered to the Railways Administration for conveyance to such consignee, and that the consignment note referred to in such affidavit relates to such goods,

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged; or

(b) that the goods referred to in paragraph (a) were received by the Railways Administration for conveyance to a specified consignee or that such goods were handled or transhipped en route by the Railways Administration, a document purporting to be an affidavit made by a person who in that affidavit alleges –

(i) that he at all relevant times was in the service of the Railways Administration in a stated capacity;

(ii) that he in the performance of his official duties received or, as the case may be, handled or transhipped the goods referred to in the consignment note referred to in paragraph (a),

shall, upon the mere production thereof at such proceedings, be *prima facie* proof of the matter so alleged.

(10)

(a) The Minister may in respect of any measuring instrument as defined in section 1 of the Trade Metrology Act, 1973 (Act 77 of 1973), by notice in the *Gazette* prescribe the conditions and requirements which shall be complied with before any reading by such measuring instrument may be accepted in criminal proceedings as proof of the fact which it purports to prove, and if the Minister has so prescribed such conditions and requirements and upon proof that such conditions and requirements have been complied with in respect of any particular measuring instrument, the measuring instrument in question shall, for the purposes of proving the fact which it purports to prove, be accepted at criminal proceedings as proving the fact recorded by it, unless the contrary is proved.

(b) An affidavit in which the deponent declares that the conditions and requirements referred to in paragraph (a) have been complied with in respect of the measuring instrument in question shall, upon the mere production thereof at the criminal proceedings in question, be *prima facie* proof that such conditions and requirements have been complied with.

(11)

(a) The Minister may with reference to any syringe intended for the drawing of blood or any receptacle intended for the storing of blood, by notice in the *Gazette* prescribe the conditions and requirements relating to the cleanliness and sealing or manner of sealing thereof which shall be complied with before any such syringe or receptacle may be used in connection with the analysing of the blood of any person for the purposes of criminal proceedings, and if –

(i) any such syringe or receptacle is immediately before being used for the said purpose, in a sealed condition, or contained in a holder which is sealed with a seal or in a manner prescribed by the Minister; and

(ii) any such syringe, receptacle or holder bears an endorsement that the conditions and requirements prescribed by the Minister have been complied with in respect of such syringe or receptacle,

proof at criminal proceedings that the seal, as thus prescribed, of such syringe or receptacle was immediately before the use of such syringe or receptacle for the said purpose intact, shall be deemed to constitute *prima facie* proof that the syringe or the receptacle in question was then free from any substance or contamination which could materially affect the result of the analysis in question.

(b) An affidavit in which the deponent declares that he had satisfied himself before using the syringe or receptacle in question –

(i) that the syringe or receptacle, was sealed as provided in paragraph (a)(i) and that the seal was intact immediately before the syringe or receptacle was used for the said purpose; and

(ii) that the syringe, receptacle or, as the case may be, the holder contained the endorsement referred to in paragraph (a)(ii),

shall, upon the mere production thereof at the proceedings in question, be *prima facie* proof that the syringe or receptacle was so sealed, that the seal was so intact and that the syringe, receptacle or holder, as the case may be, was so endorsed.

(c) Any person who for the purposes of this subsection makes or causes to be made a false endorsement on any syringe, receptacle or holder, knowing it to be false, shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury.

(12) The court before which an affidavit or certificate is under any of the preceding provisions of this section produced as *prima facie* proof of the relevant contents thereof, may in its discretion cause the person who made the affidavit or issued the certificate to be subpoenaed to give oral evidence in the proceedings in question, or may cause written interrogatories to be submitted to such person for reply, and such interrogatories and any reply thereto purporting to be a reply from such person, shall likewise be admissible in evidence at such proceedings.

(13) No provision of this section shall affect any other law under which any certificate or other document is admissible in evidence, and the provisions of this section shall be deemed to be additional to and not in substitution of any such law.

212A. Proof of certain facts by affidavit from person in foreign country

(1) Whenever in criminal proceedings the question arises whether any particular act, transaction or occurrence did or did not take place-

(a) in any particular department or sub-department of a state or territory outside the Republic;

(b) in any particular department or sub-department of an administration in such state or territory which is similar to a provincial administration in the Republic;

(c) in any branch or office of a department or sub-department contemplated in paragraph (a) or (b);

(d) in any particular court of law in such state or territory; or

(e) in any particular institution in such state or territory which is similar to a bank in the Republic,

or whenever the question arises in such proceedings whether any particular functionary in any such department, sub-department, branch, office, court or institution did or did not perform any particular act or did or did not take part in any particular transaction, the provisions of subsections (1), (2) and (3) of section 212 shall *mutatis mutandis* apply: Provided that for the purposes of this section a document purporting to be an affidavit shall have no effect unless--

(a) it is obtained in terms of an order of a competent court or on the authority of a competent government institution of the state or territory concerned, as the case may be;

(b) it is authenticated in the manner prescribed in the rules of court for the authentication of documents executed outside the Republic; or

(c) it is authenticated by a person, and in the manner, contemplated in section 8 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

(2) The admissibility and evidentiary value of an affidavit contemplated in subsection (1) shall not be affected by the fact that the form of the oath, confirmation or attestation thereof differs from the form of the oath, confirmation or attestation prescribed in the Republic.

(3) A court before which an affidavit contemplated in subsection (1) is placed, may, in order to clarify obscurities in the said affidavit, at the request of a party to the proceedings order that a supplementary affidavit be submitted or that oral evidence be heard: Provided that oral evidence shall only be heard if the court is of the opinion that it is in the interests of the administration of justice and that a party to the proceedings would be materially prejudiced should oral evidence not be heard.

(Section 212A inserted by section 5 of Act 157 of 1993)

212B. Proof of undisputed facts

(1) If an accused has appointed a legal adviser and, at any stage during the proceedings, it appears to a public prosecutor that a particular fact or facts which must be proved in a charge against an accused is or are not in issue or will not be placed in issue in criminal proceedings against the accused, he or she may, notwithstanding section 220, forward or hand a notice to the accused or his or her legal adviser setting out that fact or those facts and stating that such fact or facts shall be deemed to have been proved at the proceedings unless notice is given that any such fact will be placed in issue.

(2) The first-mentioned notice contemplated in subsection (1) shall be sent by certified mail or handed to the accused or his or her legal adviser personally at least 14 days before the commencement of the criminal proceedings or the date set for the continuation of the proceedings or within such shorter

period as may be condoned by the court or agreed upon by the accused or his or her legal adviser and the prosecutor.

(3) If any fact mentioned in such notice is intended to be placed in issue at the proceedings, the accused or his or her legal representative shall at least five days before the commencement or the date set for the continuation of the proceedings or within such shorter period as may be condoned by the court or agreed upon with the prosecutor deliver a notice in writing to that effect to the registrar or the clerk of the court, as the case may be, or orally notify the registrar or the clerk of the court to that effect in which case the registrar or the clerk of the court shall record such notice.

(4) If, after receipt of the first-mentioned notice contemplated in subsection (1), any fact mentioned in that notice is not placed in issue as contemplated in subsection (3), the court may deem such fact or facts, subject to the provisions of subsections (5) and (6), to have been sufficiently proved at the proceedings concerned.

(5) If a notice was forwarded or handed over by a prosecutor as contemplated in subsection (1), the prosecutor shall notify the court at the commencement of the proceedings of such fact and of the reaction thereto, if any, and the court shall thereupon institute an investigation into such of the facts which are not disputed and enquire from the accused whether he or she confirms the information given by the prosecutor and whether he or she understands his or her rights and the implications of the procedure and where the legal adviser of the accused replies to any question by the court under this section, the accused shall be required by the court to declare whether he or she confirms such reply or not.

(6) The court may on its own initiative or at the request of the accused order oral evidence to be adduced regarding any fact contemplated in subsection (4).

(Section 212B inserted by section 10 of Act 86 of 1996)

213. Proof of written statement by consent

(1) In criminal proceedings a written statement by any person, other than an accused at such proceedings shall, subject to the provisions of subsection (2), be admissible as evidence to the same extent as oral evidence to the same effect by such person.

(2)

(a) The statement shall purport to be signed by the person who made it, and shall contain a declaration by such person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or which he did not believe to be true.

(b) If the person who makes the statement cannot read it, it shall be read to him before he signs it, and an endorsement shall be made thereof by the person who so read the statement to the effect that it was so read.

(c) A copy of the statement, together with a copy of any document referred to in the statement as an exhibit, or with such information as may be necessary in order to enable the party on whom it is served to inspect such document or a copy thereof, shall, before the date on which the document is to be tendered in evidence, be served on each of the other parties to the proceedings, and any such party may, at least two days before the commencement of the proceedings, object to the statement being tendered in evidence under this section.

(d) If a party objects under paragraph (c) that the statement in question be tendered in evidence, the statement shall not, but subject to the provisions of paragraph (e), be admissible as evidence under this section.

(e) If a party does not object under paragraph (c) or if the parties agree before or during the proceedings in question that the .statement may be so tendered, the statement may, upon the mere production thereof at such proceedings, be admitted as evidence in the proceedings.

(f) When the documents referred to in paragraph (c) are served on an accused, the documents shall be accompanied by a written notification in which the accused is informed that the statement in question will be tendered in evidence at his trial in lieu of the State calling as a witness the person who made the statement but that such statement shall not without the consent of the accused be so tendered in evidence if be notifies the prosecutor concerned, at least two days before the commencement of the proceedings, that **he** objects to the statement so being tendered in evidence.

(3) The parties to criminal proceedings may, before or during such proceedings, agree that any written statement referred to in subsections (2)(a) and (b) which has not been served in terms of subsection (2)(c) be tendered in evidence at such proceedings, whereupon such statement may, upon the mere production thereof at such proceedings, be admitted as evidence in the proceedings.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence under this section –

(a) a party by whom or on whose behalf a copy of the statement was served, may call such person to give oral evidence;

(b) the court may, of its own motion, and shall, upon the application of any party to the proceedings in question, cause such person to be subpoenaed to give oral evidence before the court or the court may, where the person concerned is resident outside the Republic, issue a commission in respect of such person in terms of section 171.

(5) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section, shall be treated as if it had been produced as an exhibit and identified in court by the person who made the statement.

(6) Any person who makes a statement which is admitted as evidence under this section and who in such statement wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury, shall be deemed to have committed the offence of perjury and shall, upon conviction, be liable to the punishment prescribed for the offence of perjury.

214. Evidence recorded at preparatory examination admissible at trial in certain circumstances

The evidence of any witness recorded at a preparatory examination –

(a) shall be admissible in evidence on the trial of the accused following upon such preparatory examination, if it is proved to the satisfaction of the court –

(i) that the witness is dead;

(ii) that the witness is incapable of giving evidence;

(iii) that the witness is too ill to attend the trial; or

(iv) that the witness is being kept away from the trial by the means and contrivance of the accused; and

(v) that the evidence tendered is the evidence recorded before the magistrate or, as the case may be, the regional magistrate,

and if it appears from the preparatory examination record or it is proved to the satisfaction of the court that the accused or, as the case may be, the State had a full opportunity of cross-examining such witness;

(b) may, if such witness cannot, after a diligent search, be found for purposes of the trial of the accused following upon such preparatory examination, or cannot be compelled to attend such trial, in the discretion of the court, but subject to the provisions of subparagraph (v) of paragraph (a), be read as evidence at such trial, if it appears from the preparatory examination record or it is proved to the satisfaction of the court that the accused or, as the case may be, the State had a full opportunity of cross-examining such witness.

215. Evidence recorded at former trial admissible at later trial in certain circumstances

The evidence of a witness given at a former trial may, in the circumstances referred to in section 214, *mutatis mutandis* be admitted in evidence at any later trial of the same person upon the same charge.

216. …….

(Section 216 repealed by section 9 of Act 45 of 1988)

217. Admissibility of confession by accused

(1) Evidence of any confession made by any person in relation to the commission of any offence shall, if such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, be admissible in evidence against such person at criminal proceedings relating to such offence: Provided –

(a) that a confession made to a peace officer, other than a magistrate or justice, or, in the case of a peace officer referred to in section 334, a confession made to such peace officer which .relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or justice; and

(b) that where the confession is made to a magistrate and reduced to writing by him, or is confirmed and reduced to writing in the presence of a magistrate, the confession shall, upon the mere production thereof at the proceedings in question –

(i) be admissible in evidence against such person if it appears from the document in which the confession is contained that the confession was made by a person whose name corresponds to that of such person and, in the case of a confession made to a magistrate or confirmed in the presence of a magistrate through an interpreter, if a certificate by the interpreter appears on such document to the effect that he interpreted truly and correctly and to the best of his ability with regard to the contents of the confession and any question put to such person by the magistrate; and

(Section 217(1)(b)(i) substituted by section 13 of Act 56 of 1979)

(ii) be presumed, unless the contrary is proved, to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto, if it appears from the document in which the confession is contained that the confession was made freely and voluntarily by such person in his sound and sober senses and without having been unduly influenced thereto.

(2) The prosecution may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under proviso (b) to subsection (1).

(3) Any confession which is under subsection (1) inadmissible in evidence against the person who made it, shall become admissible against him –

(a) if he adduces in the relevant proceedings any evidence, either directly or in cross-examining any witness, of any oral or written statement made by him either as part of or in connection with such confession; and

(b) if such evidence is, in the opinion of the judge or the judicial officer presiding at such proceedings, favourable to such person.

218. Admissibility of facts discovered by means of inadmissible confession

(1) Evidence may be admitted at criminal proceedings of any fact otherwise admissible in evidence, notwithstanding that the witness who gives evidence of such fact, discovered such fact or obtained knowledge of such fact only in consequence of information given by an accused appearing at such proceedings in any confession or statement which by law is not admissible in evidence against such accused at such proceedings, and notwithstanding that the fact was discovered or came to the knowledge of such witness against the wish or will of such accused.

(2) Evidence may be admitted at criminal proceedings that anything was pointed out by an accused appearing at such proceedings or that any fact or thing was discovered in consequence of information given by such accused, notwithstanding, that such pointing out or information forms part of a confession or statement which by law is not admissible in evidence against such accused at such proceedings.

219. Confession not admissible against another

No confession made by any person shall be admissible as evidence against another person.

219A. Admissibility of admission by accused

(1) Evidence of any admission made extra-judicially by any person in relation to the commission of an offence shall, if such admission does not constitute a confession of that offence and is proved to have bee voluntarily made by that person, be admissible in evidence against him at criminal proceedings relating to that offence: Provided that where the admission is made to a magistrate and reduced to writing by him or is confirmed and reduced to writing in the presence of a magistrate, the admission shall, upon the mere production at the proceedings in question of the document in which the admission is contained –

(a) be admissible in evidence against such person if it appears from such document that the admission was made by a person whose name corresponds to that of such person and, in the case of an admission made to a magistrate or confirmed in the presence of a magistrate

through an interpreter, if a certificate by the interpreter appears on such document to the effect that he interpreted truly and correctly and to the best of his ability with regard to the contents of the admission and any question put to such person by the magistrate; and

(b) be presumed, unless the contrary is proved, to have been voluntarily made by such person if it appears from the document in which the admission is contained that the admission was made voluntarily by such person.

(2) The prosecution may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under subsection (1).

(Section 219A inserted by section 14 of Act 56 of 1979)

220. Admissions

An accused or his or her legal adviser or the prosecutor may in criminal proceedings admit any fact placed in issue at such proceedings and any such admission shall be sufficient proof of such fact.

(Section 220 substituted by section 12 of Act 86 of 1996)

221. Admissibility of certain trade or business records

(1) In criminal proceedings in which direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, upon production of the document, be admissible as evidence of that fact if –

(a) the document is or forms part of a record relating to any trade or business and has been compiled in the course of that trade or business, from information supplied, directly or indirectly, by persons who have or may reasonably be supposed to have personal knowledge of the matters dealt with in the information they supply; and

(b) the person who supplied the information recorded in the statement in question is dead or is outside the Republic or is unfit by reason of his physical or mental condition to attend as a witness or cannot with reasonable diligence be identified or found or cannot reasonably be expected, having regard to the time which has elapsed since he supplied the information as well as all the circumstances, to have any recollection of the matters dealt with in the information he supplied

(2) For the purpose of deciding whether or not, a statement is admissible as evidence under this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner.

(3) In estimating the weight to be attached to a statement admissible as evidence under this section, regard shall be had to all the circumstances from which any inference may reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement, did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(4) No provision of this section shall prejudice the admissibility of any evidence which would be admissible apart from the provisions of this section.

(5) In this section –

"business" includes any public transport, public utility or similar undertaking carried on by a local authority, and the activities of the Post Office and the Railways Administration;

"document" includes any device by means of which information is recorded or stored; and

"statement" includes any representation of fact, whether made in words or otherwise.

222. Application to criminal proceedings of certain provisions of Civil Proceedings Evidence Act, 1965, relating to documentary evidence

The provisions of sections 33 to 38 inclusive, of the Civil Proceedings Evidence Act, 1965 (Act 25 of 1965), shall *mutatis mutandis* apply with reference to criminal proceedings.

223. …….

(Section 223 repealed by section 9 of Act 45 of 1988)

224. Judicial notice of laws and other published matter

Judicial notice shall in criminal proceedings be taken of –

(a) any law or any matter published in a publication which purports to be the *Gazette* or the Official *Gazette* of any province;

(Section 224(a) amended by section 1 of Act 49 of 1996)

(b) any law which purports to be published under the superintendence or authority of the Government Printer.

225. Evidence of prints or bodily appearance of accused

(1) Whenever it is relevant at criminal proceedings to ascertain whether any fingerprint or body-print of an accused at such proceedings corresponds to any other fingerprint or body-print or whether the body of such an accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, evidence of the fingerprints or body-prints of the accused or that the body of the accused has or had any mark, characteristic or distinguishing feature or shows or showed any condition or appearance, including evidence of the result of any blood test of the accused, shall be admissible at such proceedings.

(2) Such evidence shall not be inadmissible by reason only thereof that the fingerprint or body-print in question was not taken or that the mark, characteristic, feature, condition or appearance in question was not ascertained in accordance with the provisions of sections 36B, 36C or 37, or that it was taken or ascertained against the wish or the will of the accused concerned.

(Section 225 substituted by section 5 of Act 6 of 2010)

226. Evidence of no sexual intercourse between spouses admissible

For the purposes of rebutting the presumption that a child to whom a married woman has given birth is the offspring of her husband, such woman or her husband or both of them may in criminal proceedings give evidence that they had no sexual intercourse with one another during the period when the child was conceived.

227. Evidence of character and previous sexual experience

(1) Evidence as to the character of an accused or as to the character of any person against or in connection with whom a sexual offence as contemplated in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is alleged to have been committed, shall, subject to the provisions of subsection (2), be admissible or inadmissible if such evidence would have been admissible or inadmissible on the 30th day of May, 1961.

(2) No evidence as to any previous sexual experience or conduct of any person against or in connection with whom a sexual offence is alleged to have been committed, other than evidence relating to sexual experience or conduct in respect of the offence which is being tried, shall be adduced, and no evidence or question in cross examination regarding such sexual experience or conduct, shall be put to such person, the accused or any other witness at the proceedings pending before the court unless-

(a) the court has, on application by any party to the proceedings, granted leave to adduce such evidence or to put such question; or

(b) such evidence has been introduced by the prosecution.

(3) Before an application for leave contemplated in subsection (2)(a) is heard, the court may direct that any person, including the complainant, whose presence is not necessary may not be present at the proceedings.

(4) The court shall, subject to subsection (6), grant the application referred to in subsection (2)(a) only if satisfied that such evidence or questioning is relevant to the proceedings pending before the court.

(5) In determining whether evidence or questioning as contemplated in this section is relevant to the proceedings pending before the court, the court shall take into account whether such evidence or questioning-

(a) is in the interests of justice, with due regard to the accused's right to a fair trial;

(b) is in the interests of society in encouraging the reporting of sexual offences;

(c) relates to a specific instance of sexual activity relevant to a fact in issue;

(d) is likely to rebut evidence previously adduced by the prosecution;

(e) is fundamental to the accused's defence;

(f) is not substantially outweighed by its potential prejudice to the complainant's personal dignity and right to privacy; or

(g) is likely to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue;

(6) The court shall not grant an application referred to in subsection (2)(a) if, in its opinion, such evidence or questioning is sought to be adduced to support an inference that by reason of the sexual nature of the complainant's experience or conduct, the complainant-

(a) is more likely to have consented to the offence being tried; or

(b) is less worthy of belief.

(7) The court shall provide reasons for granting or refusing an application in terms of subsection (2)(a), which reasons shall be entered in the record of the proceedings.

(Section 227 substituted by section 2 of Act 39 of 1989)

(Section 227 substituted by section 68 of Act 32 of 2007)

228. Evidence of disputed writing

Comparison at criminal proceedings of a disputed writing with any writing proved to be genuine, may be made by a witness, and such writings and the evidence of any witness with respect thereto, may be submitted as proof of the genuineness or otherwise of the writing in dispute.

229. Evidence of times of sunrise and sunset

(1) The Minister may from time to time by notice in the *Gazette* approve of tables prepared at any official observatory in the Republic of the times of sunrise and sunset on particular days at particular places in the Republic or any portion thereof, and appearing in any publication specified in the notice, and thereupon such tables shall, until the notice is withdrawn, on the mere production thereof in criminal proceedings be admissible as proof of such times.

(2) Tables in force immediately prior to the commencement of this Act by virtue of the provisions of section 26 of the General Law Amendment Act, 1952 (Act 32 of 1952), shall be deemed to be tables approved under subsection (1) of this section.

230. Evidence and sufficiency of evidence of appointment to public office

Any evidence which, on the thirtieth day of May, 1961 –

(a) would have been admissible as proof of the appointment of any person to any public office or of the authority of ·any person to act as a public officer, shall be admissible in evidence in criminal proceedings;

(b) would have been deemed sufficient proof of the appointment of any person to any public office or of the authority of any person to act as a public officer, shall in criminal proceedings be deemed to be sufficient proof of such appointment or authority.

231. Evidence of signature of public officer –

Any document –

(a) which purports to bear the signature of any person holding a public office; and

(b) which bears a seal or stamp purporting to be a seal or stamp of the department, office or institution to which such person is attached,

shall, upon the mere production thereof at criminal proceedings, be *prima facie* proof that such person signed such document.

232. Article may be proved in evidence by means of photograph thereof

(1) Any court may in respect of any article, other than a document, which any party to criminal proceedings may wish to produce to the court as admissible evidence at such proceedings, permit such party to produce as evidence, in lieu of such article, any photograph thereof, notwithstanding that such article is available and can be produced in evidence.

(2) The court may, notwithstanding the admission under subsection (1) of the photograph of any article, on good cause require the production of the article in question.

233. Proof of public documents

(1) Whenever any book or other document is of such a public nature as to be admissible in evidence upon its mere production from proper custody, any copy thereof or extract therefrom shall be admissible in evidence at criminal proceedings if it is proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

(2) Such officer shall furnish such certified copy or extract to any person applying therefor, upon payment of an amount in accordance with the tariff of fees prescribed by or under any law or, if no such tariff has been so prescribed, an amount in accordance with such tariff of fees as the Minister, in consultation with the Minister of Finance, may from time to time determine.

234. Proof of official documents

(1) It shall, at criminal proceedings, be sufficient to prove an original official document which is in the custody or under the control of any State official by virtue of his office, if a copy thereof or an extract therefrom, certified as a true copy or extract by the head of the department concerned or by any State official authorized thereto by such head, is produced in evidence at such proceedings.

(2)

(a) An original official document referred to in subsection (1), other than the record of judicial proceedings, may be produced at criminal proceedings only upon the order of the attorney-general.

(b) It shall not be necessary for the head of the department concerned to appear in person to produce ail original document under paragraph (a), but such document may be produced by any person authorized thereto by such head.

(3) Any official who, under subsection (1), certifies any copy or extract as true knowing that such copy or extract is false, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

235. Proof of judicial proceedings

(1) It shall, at criminal proceedings, be sufficient to prove the original record of judicial proceedings if a copy of such record, certified or purporting to be certified by the registrar or clerk of the court or other officer having the custody of the record of such judicial proceedings or by the deputy of such registrar, clerk or other officer or, in the case where judicial proceedings are taken down in shorthand or by mechanical means, by the person who transcribed such proceedings, as a true copy of such record, is produced in evidence at such criminal proceedings, and such copy shall be *prima facie* proof that any matter purporting to be recorded thereon was correctly recorded.

(2) Any person who, under subsection (1), certifies any copy as true knowing that such copy is false, shall be guilty of an, offence and liable on conviction to imprisonment for a period not exceeding two years.

236. Proof of entries in accounting records and documentation of banks

(1) The entries in the accounting records of a bank, and any document which is in the possession of any bank and which refers to the said entries or to any business transaction of the bank, shall, upon the mere production at criminal proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-

(a) that he is in the service of the bank in question;

(b) that such accounting records or document is or has been the ordinary records or document of such bank;

(Section 236(1)(b) substituted by section 12(a) of Act 204 of 1993)

(c) that the said entries have been made in the usual and ordinary course of the business of such bank or the said document has been compiled, printed or obtained in the usual and ordinary course of the business of such bank; and

(d) that such accounting records or document is in the custody or under the control of such bank,

(Section 236(1)(d) substituted by section 12(b) of Act 204 of 1993)

be *prima facie* proof at such proceedings of the matters, transactions and accounts recorded in such accounting records or document.

(2) Any entry in any accounting record referred to in subsection (1) or any document referred to in subsection (1) may be proved at criminal proceedings upon the mere production at such proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-

(a) that he is in the service of the bank in question;

(b) that he has examined the entry, accounting record or document in question; and

(c) that a copy of such entry or document set out in the affidavit or in an annexure thereto is a correct copy of such entry or document.

(3) Any party at the proceedings in question against whom evidence is adduced in terms of this section or against whom it is intended to adduce evidence in terms of this section, may, upon the order of the court before which the proceedings are pending, inspect the original of the document or entry in question and any accounting record in which such entry appears or of which such entry forms part, and such party may make copies of such document or entry, and the court shall, upon the application of the party concerned, adjourn the proceedings for the purpose of such inspection or the making of such copies.

(4) No bank shall be compelled to produce any accounting record referred to in subsection (1) at any criminal proceedings, unless the court concerned orders that any such record be produced.

(5) In this section-

'document' includes a recording or transcribed computer printout produced by any mechanical or electronic device and any device by means of which information is recorded or stored; and

'entry' includes any notation in the accounting records of a bank by any means whatsoever

(Section 236 substituted by section 45 of Act 129 of 1993)

236A. Proof of entries in accounting records and documentation of banks in countries outside Republic

(1) The entries in the accounting records of an institution in a state or territory outside the Republic which is similar to a bank in the Republic, and any document which is in the possession of such an institution and which refers to the said entries or to any business transaction of the institution, shall, upon the mere production at criminal proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-

(a) that he is in the service of the institution in question;

(b) that such accounting records or document are or were the ordinary records or document of the institution;

(c) that the said entries have been made in the usual and ordinary course of the business of such institution; and

(d) that such accounting records are or document is in the custody or under the control of such institution,

be *prima facie* proof at such proceedings of the matters, transactions and accounts recorded in such accounting records or document.

(2) Any entry in any accounting record contemplated in subsection (1) or any document contemplated in subsection (1) may be proved at criminal proceedings upon the mere production at such proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-

(a) that he is in the service of the institution in question;

(b) that he has examined the entry, accounting record or document in question; and

(c) that a copy of such entry or document set out in the affidavit or in an annexure thereto is a correct copy of such entry or document.

(3) A document purporting to be an affidavit shall for the purposes of this section have no effect unless-

(a) it is obtained in terms of an order of a competent court or on the authority of a competent government institution of the state or territory concerned, as the case may be;

(b) it is authenticated in the manner prescribed in the rules of court for the authentication of documents executed outside the Republic; or

(c) it is authenticated by a person, and in the manner, contemplated in section 8 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

(4) The admissibility and evidentiary value of an affidavit contemplated in subsections (1) and (2) shall not be affected by the fact that the form of the oath, confirmation or attestation thereof differs from the form of the oath, confirmation or attestation prescribed in the Republic.

(5) A court before which an affidavit contemplated in subsections (1) and (2) is placed may, in order to clarify obscurities in the said affidavit, on the request of a party to the proceedings order that a supplementary affidavit be submitted or that oral evidence be heard: Provided that oral evidence shall only be heard if the court is of the opinion that it is in the interests of the administration of justice and that a party to the proceedings would be materially prejudiced should oral evidence not be heard.

(6) In this section-

‘document’ includes a recording or transcribed computer printout produced by any mechanical or electronic device and any device by means of which information is recorded or stored; and

‘entry’ includes any notation, by any means whatsoever, in the accounting records of an institution contemplated in subsection (1).

(Section 236A inserted by section 6 of Act 157 of 1993)

237. Evidence on charge of bigamy

(1) At criminal proceedings at which an accused is charged with bigamy, it shall, as soon as it is proved that a marriage ceremony, other than the ceremony relating to the alleged bigamous marriage, took place, within the Republic between the accused and another person, be presumed, unless the contrary is proved, that the marriage was on the date of the solemnization thereof lawful and binding.

(2) At criminal proceedings at which an accused is charged with bigamy, it shall be presumed, unless the contrary is proved, that at the time of the solemnization of the alleged bigamous marriage there subsisted between the accused and another person a lawful and binding marriage –

(a) if there is produced at such proceedings, in any case in which the marriage is alleged to have been solemnized within the Republic, an extract from the marriage register which purports –

(i) to be a duplicate original or a copy of the marriage register relating to such marriage; and

(ii) to be certified as such a duplicate original or such a copy by the person having the custody of such marriage register or by a registrar of marriages;

(b) if there is produced at such proceedings, in any case in which the marriage is alleged to have been solemnized outside the Republic, a document which purports –

(i) to be an extract from a marriage register kept according to law in the country where the marriage is alleged to have been solemnized; and

(ii) to be certified as such an extract by the person having the custody of such register, if the signature of such person on the certificate is authenticated in accordance with any law of the Republic governing the authentication of documents executed outside the Republic.

(3) At criminal proceedings at which an accused is charged with bigamy, evidence –

(a) that shortly before the alleged bigamous marriage the accused had been cohabiting with the person to whom he is alleged to be lawfully married;

(b) that the accused had been treating and recognizing such person as a spouse; and

(c) of the performance of a marriage ceremony between the accused and such person,

shall, as soon as the alleged bigamous marriage, wherever solemnized, has been proved, be *prima facie* proof that there was a lawful and binding marriage subsisting between the accused and such person at the time of the solemnization of the alleged bigamous marriage.

238. Evidence of relationship on charge of incest

(1) At criminal proceedings at which an accused is charged with incest as contemplated in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007-

(a) it shall be sufficient to prove that the person against whom or by whom the offence is alleged to have been committed, is reputed to be the lineal ascendant or descendant or the sister, brother, stepmother, stepfather, stepdaughter or stepson of the other party to the incest;

(b) the accused shall be presumed, unless the contrary is proved, to have had knowledge, at the time of the alleged offence, of the relationship existing between him or her and the other party to the incest.

(Section 238(1) substituted by section 68 of Act 32 of 2007)

(2) Whenever the fact that any lawful and binding marriage was contracted is relevant to the issue at criminal proceedings at which an accused is charged with incest as contemplated in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, such fact may be proved *prima facie* in the manner provided in section 237 for the proof of the existence of a lawful and binding marriage of a person charged with bigamy.

(Section 238(2) substituted by section 68 of Act 32 of 2007)

239. Evidence on charge of infanticide or concealment of birth

(1) At criminal proceedings at which an accused is charged with the killing of a newly-born child, such child shall be deemed to have been born alive if the child is proved to have breathed, whether or not the child had an independent circulation, and it shall not be necessary to prove that such child was, at the time of its death, entirely separated from the body of its mother.

(2) At criminal proceedings at which an accused is charged with the concealment of the birth of a child, it shall not be necessary to prove whether the child died before or at or after birth.

240. Evidence on charge of receiving stolen property

(1) At criminal proceedings at which an accused is charged with receiving stolen property which he knew to be stolen property, evidence may be given at any stage of the proceedings that the accused was, within the period of twelve months immediately preceding the date on which he first appeared in a magistrate's court in respect of such charge, found in possession of other stolen property: Provided

that no such evidence shall be given against the accused unless at least three days' notice in writing has been given to him that it is intended to adduce such evidence against him.

(2) The evidence referred to in subsection (1) may be taken into consideration for the purpose of proving that the accused knew that the property which forms the subject of the charge was stolen property.

(3) Where the accused is proved to have received the property which is the subject of the charge, from a person under the age of eighteen years, he shall be presumed to have known at the time when he received such property that it was stolen property, unless it is proved –

(a) that the accused was at that time under the age of twenty-one years; or

(b) that the accused had good cause, other than the mere statement of the person from whom he received such property, to believe, and that he did believe, that such person had the right to dispose of such property.

241. Evidence of previous conviction on charge of receiving stolen property

If at criminal proceedings at which an accused is charged with receiving stolen property which he knew to be stolen property, it is proved that such property was found in the possession of the accused, evidence may at any stage of the proceedings be given that the accused was, within the five years immediately preceding the date on which he first appeared in a magistrate's court in respect of such charge, convicted of an offence involving fraud or dishonesty, and such evidence may be taken into consideration for the purpose of proving that the accused knew that the property found in his possession was stolen property: Provided that not less than three days' notice in writing shall be given to the accused that it is intended to adduce evidence of such previous conviction.

242. Evidence on charge of defamation

If at criminal proceedings at which an accused is charged with the unlawful publication of defamatory matter which is contained in a periodical, it is proved that such periodical or the part in which such defamatory matter is contained, was published by the accused, other writings or prints purporting to be other numbers or parts of the same periodical, previously or subsequently published, and containing a printed statement that they were published by or for the accused, shall be admissible in evidence without further proof of their publication.

243. Evidence of receipt of money or property and general deficiency on charge of theft

(1) At criminal proceedings at which an accused is charged with theft –

(a) while employed in any capacity in the service of the State, of money or of property which belonged to the State or which came into the possession of the accused by virtue of his employment;

(b) while a clerk, servant or agent, of money or of property which belonged to his employer or principal or which came into the possession of the accused on account of his employer or principal,

an entry in any book of account kept by the accused or kept under or subject to his charge or supervision, and which purports to be an entry of the receipt of money or of property, shall be proof that such money or such property was received by the accused.

(2) It shall not be necessary at proceedings referred to in subsection (1) to prove the theft by the accused of a specific sum of money or of specific goods, if –

(a) on the examination of the books of account kept or the entries made by the accused or under or subject to his charge or supervision, there is proof of a general deficiency; and

(b) the court is satisfied that the accused stole the money or goods so deficient or any part thereof.

244. Evidence on charge relating to seals and stamps

At criminal proceedings at which an accused is charged with any offence relating to any seal or stamp used for the purposes of the public revenue or of the post office in any foreign country, a despatch purporting to be from the officer administering the government of such country and transmitting to the State President any stamp, mark or impression and stating it to be a genuine stamp, mark or impression of a die-plate or other instrument provided or made or used by or under the direction of the proper authority of such country for the purpose of denoting stamp duty or postal charge, shall on its mere production at such proceedings be *prima facie* proof of the facts stated in the despatch.

245. Evidence on charge of which false representation is element

If at criminal proceedings at which an accused is charged with an offence of which a false representation is an element, it is proved that the false representation was made by the accused, he shall be deemed, unless the contrary is proved, to have made such representation knowing it to be false.

246. Presumptions relating to certain documents

Any document, including any book, pamphlet, letter, circular letter, list, record, placard or poster, which was at any time on premises occupied by any association of persons, incorporated or unincorporated,

or in the possession or under the control of any office-bearer, officer or member of such association, and –

(a) on the face whereof a person of a name corresponding to that of an accused person appears to be a member or an office-bearer of such association, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the accused is a member or an office-bearer of such association, as the case may be;

(b) on the face whereof a person of a name corresponding to that of an accused person who is or was a member of such association, appears to be the author of such document, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the accused is the author thereof;

(c) which on the face thereof appears to be the minutes or a copy of or an extract from the minutes of a meeting of such association or of any committee thereof, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof of the holding of such meeting and of the proceedings thereat;

(d) which on the face thereof discloses any object of such association, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the said object is an object of such association.

247. Presumptions relating to absence from Republic of certain persons

Any document, including any newspaper, periodical, book, pamphlet, letter, circular letter, list, record, placard or poster, on the face whereof it appears that a person of a name corresponding to that of an accused person has at any particular time been outside the Republic or has at any particular time made any statement outside the Republic, shall, upon the mere production thereof by the prosecution at criminal proceedings, be *prima facie* proof that the accused was outside the Republic at such time or, as the case may be, that the accused made such statement outside the Republic at such time, if such document is accompanied by a certificate, purporting to have been signed by the Secretary for Foreign Affairs, to the effect that he is satisfied that such document is of foreign origin.

248. Presumption that accused possessed particular qualification or acted in particular capacity

(1) If an act or an omission constitutes an offence only when committed by a person possessing a particular qualification or quality, or vested with a particular authority or acting in a particular capacity, an accused charged with such an offence upon a charge alleging that he possessed such qualification or quality or was vested with such authority or was acting in such capacity, shall, at criminal proceedings, be deemed to have possessed such qualification or quality or to have been vested with such authority or to have been acting in such capacity at the time of the commission of the offence,

unless such allegation is at any time during the criminal proceedings expressly denied by the accused or is disproved.

(2) If such allegation is denied or evidence is led to disprove it after the prosecution has closed its case, the prosecution may adduce any evidence and submit any argument in support of the allegation as if it had not closed its case.

249. Presumption of failure to pay tax or to furnish information relating to tax

When an accused is at criminal proceedings charged with any offence of which the failure to pay any tax or impost to the State, or of which the failure to furnish to any officer of the State any information relating to any tax or impost which is or may be due to the State is an element, the accused shall be deemed to have failed to pay such tax or impost or to furnish such information, unless the contrary is proved.

250. Presumption of lack of authority

(1) If a person would commit an offence if he –

(a) carried on any occupation or business;

(b) performed any act;

(c) owned or had in his possession or custody or used any article; or

(d) was present at or entered any place,

without being the holder of a licence, permit, permission or other authority or qualification (in this section referred to as the "necessary authority"), an accused shall, at criminal proceedings upon a charge that he committed such an offence, be deemed not to have been the holder of the necessary authority, unless the contrary is proved.

(2)

(a) Any peace officer and, where any fee payable for the necessary authority would accrue to the National Revenue Fund or the Railway and Harbour Fund or a provincial revenue fund, any person authorized thereto in writing by the head of the relevant department or sub-department or by the officer in charge of the relevant office, may demand the production from a person referred to in subsection (1) of the necessary authority which is appropriate.

(Section 250(2)(a) amended by section 1 of Act 49 of 1996)

(Section 250(2)(a) amended by section 4 of Act 18 of 1996)

(b) Any peace officer, other than a police official in uniform, and any person authorized under paragraph (a) shall, when demanding the necessary authority from any person, produce at the request of that person, his authority to make the demand.

(3) Any person who is the holder of the necessary authority and who fails without reasonable cause to produce forthwith such authority to the person making the demand under subsection (2) for the production thereof, or who fails without reasonable cause to submit such authority to a person and at a place and within such reasonable time as the person making the demand may specify, shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 250(3) substituted by section 15 of Act 33 of 1986)

251. Unstamped instrument admissible in criminal proceedings

An instrument liable to stamp duty shall not be held inadmissible at criminal proceedings on the ground only that it is not stamped as required by law.

252. The law in cases not provided for

The law as to the admissibility of evidence which was in force in respect of criminal proceedings on the thirtieth day of May, 1961, shall apply in any case not expressly provided for by this Act or any other law.

252A. Authority to make use of traps and undercover operations and admissibility of evidence so obtained

(1) Any law enforcement officer, official of the State or any other person authorised thereto for such purpose (hereinafter referred to in this section as an official or his or her agent) may make use of a trap or engage in an undercover operation in order to detect, investigate or uncover the commission of an offence, or to prevent the commission of any offence, and the evidence so obtained shall be admissible if that conduct does not go beyond providing an opportunity to commit an offence: Provided that where the conduct goes beyond providing an opportunity to commit an offence a court may admit evidence so obtained subject to subsection (3).

(2) In considering the question whether the conduct goes beyond providing an opportunity to commit an offence, the court shall have regard to the following factors:

(a) Whether, prior to the setting of a trap or the use of an undercover operation, approval, if it was required, was obtained from the attorney-general to engage such investigation methods and the extent to which the instructions or guidelines issued by the attorney-general were adhered to;

(b) the nature of the offence under investigation, including-

(i) whether the security of the State, the safety of the public, the maintenance of public order or the national economy is seriously threatened thereby;

(ii) the prevalence of the offence in the area concerned; and

(iii) the seriousness of such offence;

(c) the availability of other techniques for the detection, investigation or uncovering of the commission of the offence or the prevention thereof in the particular circumstances of the case and in the area concerned;

(d) whether an average person who was in the position of the accused, would have been induced into the commission of an offence by the kind of conduct employed by the official or his or her agent concerned;

(e) the degree of persistence and number of attempts made by the official or his or her agent before the accused succumbed and committed the offence;

(f) the type of inducement used, including the degree of deceit, trickery, misrepresentation or reward;

(g) the timing of the conduct, in particular whether the official or his or her agent instigated the commission of the offence or became involved in an existing unlawful activity;

(h) whether the conduct involved an exploitation of human characteristics such as emotions, sympathy or friendship or an exploitation of the accused's personal, professional or economic circumstances in order to increase the probability of the commission of the offence;

(i) whether the official or his or her agent has exploited a particular vulnerability of the accused such as a mental handicap or a substance addiction;

(j) the proportionality between the involvement of the official or his or her agent as compared to that of the accused, including an assessment of the extent of the harm caused or risked by the official or his or her agent as compared to that of the accused, and the commission of any illegal acts by the official or his or her agent;

(k) any threats, implied or expressed, by the official or his or her agent against the accused;

(l) whether, before the trap was set or the undercover operation was used, there existed any suspicion, entertained upon reasonable grounds, that the accused had committed an offence similar to that to which the charge relates;

(m) whether the official or his or her agent acted in good or bad faith; or

(n) any other factor which in the opinion of the court has a bearing on the question.

(3)

(a) If a court in any criminal proceedings finds that in the setting of a trap or the engaging in an undercover operation the conduct goes beyond providing an opportunity to commit an offence, the court may refuse to allow such evidence to be tendered or may refuse to allow such evidence already tendered, to stand, if the evidence was obtained in an improper or unfair manner and that the admission of such evidence would render the trial unfair or would otherwise be detrimental to the administration of justice.

(b) When considering the admissibility of the evidence the court shall weigh up the public interest against the personal interest of the accused, having regard to the following factors, if applicable:

(i) The nature and seriousness of the offence, including –

(aa) whether it is of such a nature and of such an extent that the security of the State, the safety of the public, the maintenance of public order or the national economy is seriously threatened thereby;

(bb) whether, in the absence of the use of a trap or an undercover operation, it would be difficult to detect, investigate, uncover or prevent its commission;

(cc) whether it is so frequently committed that special measures are required to detect, investigate or uncover it or to prevent its commission; or

(dd) whether it is so indecent or serious that the setting of a trap or the engaging of an undercover operation was justified;

(ii) the extent of the effect of the trap or undercover operation upon the interests of the accused, if regard is had to-

(aa) the deliberate disregard, if at all, of the accused's rights or any applicable legal and statutory requirements;

(bb) the facility, or otherwise, with which such requirements could have been complied with, having regard to the circumstances in which the offence was committed; or

(cc) the prejudice to the accused resulting from any improper or unfair conduct;

(iii) the nature and seriousness of any infringement of any fundamental right contained in the Constitution;

(iv) whether in the setting of a trap or the engagement of an undercover operation the means used was proportional to the seriousness of the offence; and

(v) any other factor which in the opinion of the court ought to be taken into account.

(4) An attorney-general may issue general or specific guidelines regarding the supervision and control of traps and undercover operations, and may require any official or his or her agent to obtain his or her written approval in order to set a trap or to engage in an undercover operation at any place within his or her area of jurisdiction, and in connection therewith to comply with his or her instructions, written or otherwise.

(5)

(a) An official or his or her agent who sets or participates in a trap or an undercover operation to detect, investigate or uncover or to obtain evidence of or to prevent the commission of an offence, shall not be criminally liable in respect of any act which constitutes an offence and which relates to the trap or undercover operation if it was performed in good faith.

(b) No prosecution for an offence contemplated in paragraph (a) shall be instituted against an official or his or her agent without the written authority of the attorney-general.

(6) If at any stage of the proceedings the question is raised whether evidence should be excluded in terms of subsection (3) the burden of proof to show, on a balance of probabilities, that the evidence is admissible, shall rest on the prosecution: Provided that the accused shall furnish the grounds on which the admissibility of the evidence is challenged: Provided further that if the accused is not represented the court shall raise the question of the admissibility of the evidence.

(7) The question whether evidence should be excluded in terms of subsection (3) may, on application by the accused or the prosecution, or by order of the court of its own accord be adjudicated as a separate issue in dispute.

(Section 252A inserted by section 1 of Act 85 of 1996)

253. Saving of special provisions in other laws

No provision of this Chapter shall be construed as modifying any provision of any other law whereby in any criminal proceedings referred to in such law certain specified facts and circumstances are deemed to be evidence or a particular fact or circumstance may be proved in a manner specified therein.

CHAPTER 25
CONVERSION OF TRIAL INTO ENQUIRY

254. …….

(Section 254 amended by section 8 of Act 26 of 1987)

(Section 254 repealed by section 99(1) of Act 75 of 2008)

255. Court may order enquiry under Prevention and Treatment of Drug Dependency Act, 1992

(1)

(a) If in any court during the trial of a person who is charged with an offence other than an offence referred to in section 18, it appears to the judge or judicial officer presiding at the trial that such person is probably a person as is described in section 21(1) of the Prevention and Treatment of Drug Dependency Act, 1992 (in this section referred to as the said Act), the judge or judicial officer may, with the consent of the prosecutor given after consultation with a social worker as defined in section 1 of the said Act, stop the trial and order that an enquiry be held in terms of section 22 of the said Act in respect of the person concerned by a magistrate as defined in section 1 of the said Act and indicated in the order.

(Section 255(1)(a) substituted by section 32 of Act 105 of 1997)

(b) The prosecutor shall not give his consent in terms of paragraph (a) if the person concerned is a person in respect of whom the imposition of punishment of imprisonment would be compulsory if he were convicted at such trial.

(2)

(a) If the person concerned is in custody he shall for all purposes be deemed to have been arrested in terms of a warrant issued under section 21(1) of the said Act and shall as soon as practicable be brought before the said magistrate.

(b) If the person concerned is not in custody the said judge or judicial officer shall determine the time when and the place where the person concerned shall appear before the said magistrate, and he shall thereafter for all purposes be deemed to have been summoned in terms of section 21(1) of the said Act to appear before the said magistrate at the time and place so determined.

(3) As soon as possible after an order has been made under subsection (1) of this section, a prosecutor attached to the court of the said magistrate shall obtain a report as is mentioned in section 21(2) of the said Act.

(4) The provisions of the said Act shall *mutatis mutandis* apply in respect of a person who appears before a magistrate, as defined in section 1 of the said Act, in pursuance of an order made under subsection (1) of this section as if he were a person brought before the said magistrate in terms of section 21(1) of the said Act and as if the report obtained in terms of subsection (3) of this section were a report obtained in terms of section 21(2) of the said Act.

(5) If an order is made under subsection (1) in the course of a trial, whether before or after conviction, and a magistrate under the said Act orders that the person concerned be detained in a treatment centre or registered treatment centre, the proceedings at the trial shall be null and void in so far as such person is concerned.

(6) A copy of the record of the proceedings at the trial, certified or purporting to be certified by the registrar or clerk of the court or other officer having the custody of the record of such proceedings or by the deputy of such registrar, clerk or other officer or, in the case where the proceedings were taken down in shorthand or by mechanical means, by the person who transcribed the proceedings, as a true copy of such record, may be produced at the said enquiry as evidence.

(Section 255 substituted by section 50 of Act 20 of 1992)

CHAPTER 26
COMPETENT VERDICTS

256. Attempt

If the evidence in criminal proceedings does not prove the commission of the offence charged but proves an attempt to commit that offence or an attempt to commit any other offence of which an accused may be convicted on the offence charged, the accused may be found guilty of an attempt to commit that offence or, as the case may be, such other offence.

257. Accessory after the fact

If the evidence in criminal proceedings does not prove the commission of the offence charged but proves that the accused is guilty as an accessory after that offence or any other offence of which he may be convicted on the offence charged, the accused may be found guilty as an accessory after that offence or, as the case may be, such other offence, and shall, in the absence of any punishment expressly provided by law, be liable to punishment at the discretion of the court: Provided that such punishment shall not exceed the punishment which may be imposed in respect of the offence with reference to which the accused is convicted as an accessory.

(Section 257 amended by section 33 of Act 105 of 1997)

258. Murder and attempted murder

If the evidence on a charge of murder or attempted murder does not prove the offence of murder or, as the case may be, attempted murder, but –

(a) the offence of culpable homicide;

(b) the offence of assault with intent to do grievous bodily harm;

(c) the offence of robbery;

(d) in a case relating to a child, the offence of exposing an infant, whether under a statute or at common law, or the offence of disposing of the body of a child, in contravention of section 113 of the General Law Amendment Act, 1935 (Act 46 of 1935), with intent to conceal the fact of its birth;

(e) the offence of common assault;

(f) the offence of public violence; or

(g) the offence of pointing a fire-arm, air-gun or air-pistol in contravention of any law,

the accused may be found guilty of the offence so proved.

259. Culpable homicide

If the evidence on a charge of culpable homicide does not prove the offence of culpable homicide, but –

(a) the offence of assault with intent to do grievous bodily harm;

(b) the offence of robbery;

(c) in a case relating to a child, the offence of exposing an infant, whether under a statute or at common law, or the offence of disposing of the body of a child, in contravention of section 113 of the General Law Amendment Act, 1935 (Act 46 of 1935), with intent to conceal the fact of its birth;

(d) the offence of common assault;

(e) the offence of public violence; or

(f) the offence of pointing a fire-arm, air-gun or air-pistol in contravention of any law,

the accused may be found guilty of the offence so proved.

260. Robbery

If the evidence on a charge of robbery or attempted robbery does not prove the offence of robbery or, as the case may be, attempted robbery, but

(a) the offence of assault with intent to do grievous bodily harm;

(b) the offence of common assault;

(c) the offence of pointing a firearm, air-gun or air-pistol in contravention of any law;

(d) the offence of theft;

(e) the offence of receiving stolen property knowing it to have been stolen; or

(Section 260(e) amended by section 1 of Act 49 of 1996)

(f) an offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955),

(Section 260(f) amended by section 1 of Act 49 of 1996)

(g) …….

(Section 260(g) deleted by section 1 of Act 49 of 1996)

the accused may be found guilty of the offence so proved, or, where the offence of assault with intent to do grievous bodily harm or the offence of common assault and the offence of theft are proved, of both such offences.

261. Rape, compelled rape, sexual assault, compelled sexual assault and compelled self-sexual assault

(1) If the evidence on a charge of rape or compelled rape, as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or any attempt to commit any of those offences, does not prove any such offence or an attempt to commit any such offence, but the offence of-

(a) assault with intent to do grievous bodily harm;

(b) common assault;

(c) sexual assault as contemplated in section 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(d) compelled sexual assault as contemplated in section 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(e) compelled self-sexual assault as contemplated in section 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(f) incest as contemplated in section 12 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(g) having committed an act of consensual sexual penetration with a child as contemplated in section 15 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act. 2007; or

(h) having committed an act of consensual sexual violation with a child as contemplated in section 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,

the accused may be found guilty of the offence so proved.

(2) If the evidence on a charge of sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in sections 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, does not prove any such offence but the offence of-

(a) common assault or;

(b) having committed an act of consensual sexual violation with a child as contemplated in section 16 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,

the accused may be found guilty of the offence so proved.

(Section 261 amended by section 6 of Act 72 of 1985)

(Section 261 substituted by section 68 of Act 32 of 2007)

262. Housebreaking with intent to commit an offence

(1) If the evidence on a charge of housebreaking with intent to commit an offence specified in the charge, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit the offence so specified but the offence of housebreaking with intent to commit an offence other than the offence so specified or the offence of housebreaking with intent to commit an offence unknown or the offence of malicious injury to property, the accused may be found guilty of the offence so proved.

(Section 262(1) substituted by section 6 of Act 64 of 1982)

(2) If the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit an offence to the prosecutor unknown but the offence of housebreaking with intent to commit a specific offence, or the offence of malicious injury to property, the accused may be found guilty of the offence so proved.

(Section 262(2) substituted by section 5(a) of Act 4 of 1992)

(3) If the evidence on a charge of attempted housebreaking with intent to commit an offence specified in the charge, or attempted housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of attempted housebreaking with intent to commit the offence so specified, or attempted housebreaking with intent to commit an offence to the prosecutor unknown, but the offence of malicious injury to property, the accused may be found guilty of the offence so proved.

(Section 262(3) added by section 5(b) of Act 4 of 1992)

263. Statutory offence of breaking and entering or of entering premises

(1) If the evidence on a charge for the statutory offence in any province of breaking and entering or of the entering of any premises with intent to commit an offence specified in the charge, does not prove the offence of breaking and entering or of entering the premises with intent to commit the offence so specified but the offence of breaking and entering or of entering the premises with intent to commit an offence other than the offence so specified or of breaking and entering or of entering the premises with intent to commit an offence unknown, the accused may be found guilty –

(a) of the offence so proved; or

(b) where it is a statutory offence within the province in question to be in or upon any dwelling, premises or enclosed area between sunset and sunrise without lawful excuse, of such offence, if such be the facts proved.

(2) If the evidence on a charge for the statutory offence in any province of breaking and entering or of the entering of any premises with intent to commit an offence to the prosecutor unknown, does not prove the offence of breaking and entering or of entering the premises with intent to commit an offence to the prosecutor unknown but the offence of breaking and entering or of entering the premises with intent to commit a specific offence, the accused may be found guilty of the offence so proved.

264. Theft

(1) If the evidence on a charge of theft does not prove the offence of theft, but –

(a) the offence of receiving stolen property knowing it to have been stolen;

(b) an offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act 62 of 1955); or

(Section 264(b) amended by section 1 of Act 49 of 1996)

(c) an offence under section 1 of the General Law Amendment Act, 1956 (Act 50 of 1956),

(Section 264(c) amended by section 1 of Act 49 of 1996)

(d) …….

(Section 264(d) deleted by section 1 of Act 49 of 1996)

the accused may be found guilty of the offence so proved.

(2) If a charge of theft alleges that the property referred to therein was stolen on one occasion and the evidence proves that the property was stolen on different occasions, the accused may be convicted of the theft of such property as if it had been stolen on that one occasion.

265. Receiving stolen property knowing it to have been stolen

If the evidence on a charge of receiving stolen property knowing it to have been stolen does not prove that offence, but –

(a) the offence of theft; or

(Section 265(a) amended by section 1 of Act 49 of 1996)

(b) an offence under section 37 of the General Law Amendment Act, 1955 (Act 62 of 1955),

(Section 265(a) amended by section 1 of Act 49 of 1996)

(c) …….

(Section 265(c) deleted by section 1 of Act 49 of 1996)

the accused may be found guilty of the offence so proved.

266. Assault with intent to do grievous bodily harm

If the evidence on a charge of assault with intent to do grievous bodily harm does not prove the offence of assault with intent to do grievous bodily harm but the offence of –

(a) common assault;

(b) sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in sections 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or

(Section 266(b) substituted by section 68 of Act 32 of 2007)

(c) pointing a fire-arm, air-gun or air-pistol in contravention of any law,

the accused may be found guilty of the offence so proved.

267. Common assault

If the evidence on a charge of common assault proves the offence of sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in sections 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, the accused may be found guilty of any such offence, or, if the evidence on such a charge does not prove the offence of common assault but the offence of pointing a fire- arm, air-gun or air-pistol in contravention of any law, the accused may be found guilty of that offence.

(Section 267 substituted by section 68 of Act 32 of 2007)

268. Statutory unlawful carnal intercourse

If the evidence on a charge of unlawful carnal intercourse or attempted unlawful carnal intercourse with another person in contravention of any statute does not prove that offence but –

(a) the offence of sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

(b) the offence of common assault; or

(c) the statutory offence of –

(i) committing an immoral or indecent act with such other person;

(ii) soliciting, enticing or importuning such other person to have unlawful carnal intercourse;

(iii) soliciting, enticing or importuning such other person to commit an immoral or indecent act; or

(iv) conspiring with such other person to have unlawful carnal intercourse,

the accused may be found guilty of the offence so proved.

(Section 268 substituted by section 68 of Act 32 of 2007)

269. …….

(Section 269 repealed by section 68 of Act 32 of 2007)

269A.

If evidence on a charge of an offence under Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, does not prove the offence so charged but proves the offence of-

(a) theft;

(b) fraud; or

(c) extortion,

the accused may be found guilty of the crime or offence so proved.

(Section 269A inserted by section 36 of Act 12 of 2004)

270. Offences not specified in this Chapter

If the evidence on a charge for any offence not referred to in the preceding sections of this Chapter does not prove the commission of the offence so charged but proves the commission of an offence which by reason of the essential elements of that offence is included in the offence so charged, the accused may be found guilty of the offence so proved.

271. Previous convictions may be proved

(1) The prosecution may, after an accused has been convicted but before sentence has been imposed upon him, produce to the court for admission or denial by the accused a record of previous convictions alleged against the accused.

(2) The court shall ask the accused whether he admits or denies any previous conviction referred to in subsection (1).

(3) If the accused denies such previous conviction, the prosecution may tender evidence that the accused was so previously convicted.

(4) If the accused admits such previous conviction or such previous conviction is proved against the accused, the court shall take such conviction into account when imposing any sentence in respect of the offence of which the accused has been convicted.

271A. Certain convictions fall away as previous convictions after expiration of 10 years

Where a court has convicted a person of –

(a) any offence in respect of which a sentence of imprisonment for a period exceeding six months without the option of a fine, may be imposed but-

(i) has postponed the passing of sentence in terms of section 297(1)(a) and has discharged that person in terms of section 297(2) without passing sentence or has not called upon him or her to appear before the court in terms of section 297(3); or

(ii) has discharged that person with a caution or reprimand in terms of section 297(1)(c);or

(b) any offence in respect of which a sentence of imprisonment for a period not exceeding six months without the option of a fine, may be imposed,

that conviction shall fall away as a previous conviction if a period of 10 years has elapsed after the date of conviction of the said offence, unless during that period the person has been convicted of an offence in respect of which a sentence of imprisonment for a period exceeding six months without the option of a fine, may be imposed.

(Section 271A inserted by section 12 of Act 5 of 1991)
(Section 271A amended by section 6 of Act 4 of 1992)
(Section 271A substituted by section 2 of Act 65 of 2008)

271B. Expungement of certain criminal records

(1)

(a) Where a court has imposed any of the following sentences on, or has made any of the following orders in respect of, a person convicted of an offence, the criminal record of that person, containing the conviction and sentence or order in question, must, subject to paragraph (b) and subsection (2) and section 271D, on the person's written application, be expunged after a period of 10 years has elapsed after the date of conviction for that offence, unless during that period the person in question has been convicted of an offence and has been sentenced to a period of imprisonment without the option of a fine:

(Words preceding section 271B(1)(a)(i) substituted by section 6(a) of Act 42 of 2013)

(i) A sentence postponing the passing of sentence in terms of section 297(1)(a) where that person was discharged in terms of section 297(2), without the passing of sentence, or where that person was not called upon to appear before the court in terms of section 297(3);

(ii) a sentence discharging that person with a caution or reprimand in terms of section 297(1)(c);

(iii) a sentence in the form of a fine only, not exceeding R20 000;

(iv) a sentence of corporal punishment before corporal punishment was declared to be unconstitutional as a sentencing option;

(v) any sentence of imprisonment with the option of a fine, not exceeding R20 000;

(vi) any sentence of imprisonment which was suspended wholly;

(viA) an order in terms of section 290(1)(a) or (b) as that section was before it was repealed by section 99 of the Child Justice Act, 2008 (Act No. 75 of 2008);
(Section 271B(1)(a)(viA) inserted by section 6(b) of Act 42 of 2013)

(vii) a sentence of correctional supervision, referred to in section 276(1)(h) or a sentence referred to in section 276(1)(i); or
(Section 271B(1)(a)(vii) substituted by section 6(c) of Act 42 of 2013)

(viii) a sentence of periodical imprisonment, referred to in section 276(1)(c).

(b) A person-

(i) who has been convicted of a sexual offence against a child or a person who is mentally disabled and whose name has been included in the National Register for Sex Offenders, as provided for in section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); or

(ii) whose name has been included in the National Child Protection Register as a result of a conviction for an offence, as provided for in section 120(1)(b) of the Children's Act, 2005 (Act No. 38 of 2005),

does not qualify to have the criminal record in question expunged in terms of this section, unless his or her name has been removed from the National Register of Sex Offenders, as provided for in section 51 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, or section 128 of the Children's Act, 2005, as the case may be.

(2) The Director-General: Justice and Constitutional Development must, on receipt of the written application of a person referred to in subsection (1), issue a certificate of expungement, directing that the criminal record of that person be expunged, if the Director-General is satisfied that the person applying for expungement complies with the criteria set out in subsection (1).

(3) The Director-General: Justice and Constitutional Development must submit every certificate of expungement that has been issued as provided for in subsection (2) to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with section 271D.

(Section 271B inserted by section 3 of Act 65 of 2008)

271C. Expungement of certain criminal records under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect

(1) Where a court has convicted a person of any of the following offences, the criminal record, containing the conviction and sentence in question, of that person in respect of that offence must be expunged automatically by the Criminal Record Centre of the South African Police Service, as provided for in section 271D:

(a) A contravention of section 1 of the Black Land Act, 1913 (Act No. 27 of 1913);

(b) a contravention of section 12 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);

(c) a contravention of section 5(1), read with section 5(2), section 6(1), read with section 6(2), section 9(3), section 9(3)bis(a), read with section 9(3)(c), section 10(1), read with section 10(4), section 11(1), read with section 11(2)(a), section 12(1), read with section 12(2), section 12(3), section 15(1), read with section 15(3), section 29(1), read with section 29(9) and section 29(12), section 31(1), read with section 31(2), section 35(1), read with section 35(4), section 35(5), section 35(6), section 40(3), section 43bis or section 44, of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945);

(Section 271C(1)(c) substituted by section 7(a) of Act 42 of 2013)

(d) a contravention of section 8(1), read with section 8(3), of the Coloured Persons Settlement Act, 1946 (Act No. 7 of 1946);

(e) a contravention of section 2 or 4 of the Prohibition of Mixed Marriages Act, 1949 (Act No. 55 of 1949);

(f) a contravention of section 11 of the Internal Security Act, 1950 (Act No. 44 of 1950);

(g) a contravention of section 10(6) and (7), 11(4), 14, 15, 16, 20(1), 28(7), 29(1) or 30 of the Black Building Workers Act, 1951 (Act No. 27 of 1951);

(h) a contravention of section 15 of the Blacks (Abolition of Passes and Co-ordination of Documents) Act, 1952 (Act No. 67 of 1952);

(i) a contravention of section 2 of the Criminal Law Amendment Act, 1953 (Act No. 8 of 1953);

(j) a contravention of section 2(2) of the Reservation of Separate Amenities Act, 1953 (Act No. 49 of 1953);

(k) a contravention of section 16 of the Sexual Offences Act, 1957 (Act No. 23 of 1957);

(kA) a contravention of section 14, section 20(2), section 20A(4) or section 26(2) of the Black Labour Act, 1964 (Act No. 67 of 1964);

(Section 271C(1)(kA) inserted by section 7(b) of Act 42 of 2013)

(l) a contravention of section 46 of the Group Areas Act, 1966 (Act No. 36 of 1966);

(m) a contravention of section 2 or 3 of the Terrorism Act, 1967 (Act No. 83 of 1967); or

(n) a contravention of section 2 read with section 4(1), of the Prohibition of Foreign Financing of Political Parties Act, 1968 (Act No. 51 of 1968).

(2)

(a) Where a court has convicted a person of contravening any provision of-

(i) an Act of Parliament or subordinate legislation made thereunder;

(ii) an ordinance of a provincial council;

(iii) a municipal by-law;

(iv) a proclamation;

(v) a decree; or

(vi) any other enactment having the force of law,

other than those provisions referred to in subsection (1), which were enacted in the former Republic of South Africa, the former Republic of Transkei, Bophuthatswana, Ciskei or Venda, or in any former self-governing territory, as provided for in the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, which created offences that were based on race or which created offences, which would not have been considered to be offences in an open and democratic society, based on human dignity, equality and freedom, under the constitutional dispensation after 27 April 1994, the criminal record, containing the conviction and sentence in question, of that person must, on the person's written application, subject to subsection (3) and section 271D, be expunged.

(b) Where the criminal record of a person referred to in subsection (1) has not been expunged automatically as provided for in that subsection, the criminal record of that person must, on his or her written application, subject to subsection (3) and section 271D, be expunged.

(3) The Director-General: Justice and Constitutional Development must, on receipt of the written application of a person referred to in subsection (2)(a) or (b), issue a certificate of expungement, directing that the criminal record of the person be expunged, if the Director- General is satisfied that the person applying for expungement complies with the criteria set out in subsection (1) or subsection (2)(a), as the case may be.

(4) The Director-General: Justice and Constitutional Development must submit every certificate of expungement that has been issued as provided for in subsection (3) or (5)(b) to the head of the Criminal Record Centre of the South African Police Service, to be dealt with in accordance with section 271D.

(5)

(a) In the case of a dispute or any uncertainty as to whether an offence is an offence as referred to in subsection (1) or (2)(a) or not, the matter must be referred to the Minister for a decision.

(b) If the Minister decides that the offence is an offence as referred to in subsection (1) or (2)(a), he or she must issue a certificate of expungement, directing that the criminal record of the person be expunged.

(Section 271C inserted by section 3 of Act 65 of 2008)

271D. Expungement of certain criminal records by Criminal Record Centre

(1) The head of the Criminal Record Centre of the South African Police Service or a senior person or persons at the rank of Director or above, employed at the Centre, who has or have been authorised, in writing, by the head of the Centre to do so, must expunge the criminal record of a person if-

(i) he or she is furnished with a certificate of expungement by the Director-General: Justice and Constitutional Development as provided for in section 271B(2) or section 271C(3) or by the Minister as provided for in section 271C(5); or

(ii) that person qualifies for the automatic expungement of his or her criminal record as provided for in section 271C(1).

(2) The head of the Criminal Record Centre of the South African Police Service must, on the written request of a person who-

(a) has applied to have his or her criminal record expunged in terms of section 271B or section 271C(2); or

(b) qualifies to have his or her criminal record expunged automatically in terms of section 271C(1), in writing, confirm that the criminal record in question has been expunged.

(3) Any person who-

(a) without the authority of a certificate of expungement as provided for in section 271B, 271C or this section; and

(b) intentionally or in a grossly negligent manner,

expunges the criminal record of any person or confirms that a criminal record has been expunged as provided for in subsection (2), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and that imprisonment.

(Section 271D inserted by section 3 of Act 65 of 2008)

271DA. Revoking of certificate of expungement erroneously issued

(1) Where the Director-General: Justice and Constitutional Development, in terms of section 271B(2) or 271C(3), or the Minister, in terms of section 271C(5)(b), has issued a certificate of expungement and it subsequently appears that the applicant did not qualify for the expungement of his or her record, the Director-General must-

(a) inform the applicant in writing of the information that has come to his or her attention and that he or she or the Minister intends to revoke the certificate of expungement;

(b) afford the applicant an opportunity to furnish compelling written reasons to him or her or the Minister, within 90 working days after the applicant has been informed of the intention to revoke, why his or her record should remain expunged;

(c) inform the applicant in writing within 30 working days after a decision is made of-

(i) his or her or the Minister's decision; and

(ii) the reasons for revoking the certificate of expungement; and

(d) inform the head of the Criminal Record Centre of the South African Police Service in writing within 14 working days after the decision was made, to revoke the certificate of expungement and to reinstate the convictions and sentences in question.

(2) If the applicant fails to furnish compelling written reasons contemplated in subsection (1)(b), the Director-General or the Minister, as the case may be, may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

271DB. Delegation of powers and assignment of duties by Director-General

(1) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred on or assigned to him or her in terms of section 271B(2) or (3) or 271C(3) or (4) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

(2) A delegation or assignment in terms of subsection (1)-

(a) is subject to any limitation, condition and direction which the Director-General may impose;

(b) must be in writing; and

(c) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Director-General may-

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

(b) at any time, in writing, withdraw a delegation or assignment.

(Section 271DA inserted by section 8 of Act 42 of 2013)

271E. Regulations

The Minister-

(a) must make regulations regarding-

(i) the form on which a person's written application for the expungement of his or her criminal record must be made, as provided for in section 271B(1)(a) and section 271C(2)(a) and (b);

(ii) the certificate of expungement to be issued by the Director-General: Justice and Constitutional Development or the Minister, as provided for in section 271B(2) and section 271C(3) and (5)(b); and

(iii) the manner in which the Director-General must submit certificates of expungement that have been issued, to the head of the Criminal Record Centre of the South African Police Service, as provided for in section 271B(3) and section 271C(4); and

(b) may make regulations regarding any other matter which is necessary or expedient in order to achieve the objects of sections 271B, 271C and 271D.

(Section 271E inserted by section 3 of Act 65 of 2008)

272. Finger-print record *prima facie* evidence of conviction

When a previous conviction may be proved under any provision of this Act, a record, photograph or document which relates to a finger-print and which purports to emanate from the officer commanding the South African Criminal Bureau or, in the case of any other country, from any officer having charge of the criminal records of the country in question, shall, whether or not such record, photograph or document was obtained under any law or against the wish or the will of the person concerned, be admissible in evidence at criminal proceedings upon production thereof by a police official having the custody thereof, and shall be *prima facie* proof of the facts contained therein.

273. Evidence of further particulars relating to previous conviction

Whenever any court in criminal proceedings requires particulars or further particulars or clarification of any previous conviction admitted by or proved against an accused at such proceedings –

(a) any telegram purporting to have been sent by the officer commanding the South African Criminal Bureau or by any court within the Republic; or

(b) any document purporting to be certified as correct by the officer referred to in paragraph (a) or by any registrar or clerk of any court within the Republic or by any officer in charge of any prison within the Republic,

and which purports to furnish such particulars or such clarification, shall, upon the mere production thereof at the relevant proceedings be admissible as *prima facie* proof of the facts contained therein.

CHAPTER 28
SENTENCE

274. Evidence on sentence

(1) A court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.

(2) The accused may address the court on any evidence received under subsection (1), as well as on the matter of the sentence, and thereafter the prosecution may likewise address the court.

275. Sentence by judicial officer or judge other than judicial officer or judge who convicted accused

(1) If sentence is not passed upon an accused forthwith upon conviction in a lower court, or if, by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in a lower court or to pass sentence afresh in such court, any judicial officer of that court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be, and after consideration of the evidence recorded and in the presence of the accused, pass sentence on the accused or take such other steps as the judicial officer who is absent, could lawfully have taken in the proceedings in question if he or she had not been absent.

(2) Whenever-

(a) a judge is required to sentence an accused convicted by him or her of any offence; or

(b) any matter is remitted on appeal or otherwise to the judge who presided at the trial of an accused,

and that judge is for any reason not available, any other judge of the provincial or local division concerned may, after consideration of the evidence recorded and in the presence of the accused, sentence the accused or, as the case may be, take such other steps as the former judge could lawfully have taken in the proceedings in question if he or she had been available.

(Section 275 substituted by section 7 of Act 34 of 1998)

276. Nature of punishments

(1) Subject to the provisions of this Act and any other law and of the common law, the following sentences may be passed upon a person convicted of an offence, namely –

(a) …….

(Section 276(1)(a) deleted by section 34 of Act 105 of 1997)

(b) imprisonment, including imprisonment for life or imprisonment for an indefinite period as referred to in section 286B(1);

(Section 276(1)(b) substituted by section 3 of Act 107 of 1990)

(Section 276(1)(b) substituted by section 20 of Act 116 of 1993)

(c) periodical imprisonment;

(d) declaration as an habitual criminal;

(e) committal to any institution established by law;

(f) a fine;

(g) …….

(Section 276(1)(g) deleted by section 2 of Act 33 of 1997)

(h) correctional supervision;

(Section 276(1)(h) added by section 41(a) of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg; with effect from 1 August 1992 in the Magisterial Districts of Adelaide, Albany, Alexandria, Barkly West, Bathurst, Bedford, Bloemfontein, Boshof, Bothaville, Botshabelo, Brandfort, Caledon, Calitzdorp, Camperdown, Ceres, Chatsworth, Durban, East London, Fort Beaufort, George, Groblersdal, Hankey, Hennenman, Herbert, Humansdorp, Inanda, Jacobsdal, Kimberley, King William's Town, Kirkwood, Klerksdorp, Knysna, Komga, Koppies, Kroonstad, Ladismith (C), Laingsburg, Lindley, Lydenburg, Malmesbury, Middelburg (T), Montagu, Mossel Bay, Moutse, Nelspruit, Oberholzer, Odendaalsrus, Oudtshoorn, Paarl, Parys, Pilgrim's Rest, Petrusburg, Pietermaritzburg, Pinetown, Port Elizabeth, Potchefstroom, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Tulbagh, Uitenhage, Uniondale, Vanderbijlpark, Ventersdorp, Vereeniging, Viljoenskroon, Vredefort, Warrenton, Welkom, Wellington, Witbank, White River and Worcester; with effect from 1 October 1992 in the Magisterial Districts of Alberton, Barberton, Belfast, Benoni, Bergville, Bethal, Bethlehem, Bloemhof, Boksburg, Brakpan, Carolina, Coligny, Cradock, Delmas, Dundee, Eshowe, Estcourt, Frankfort, Germiston, Glencoe, Gordonia, Graaff-Reinet, Harrismith, Heidelberg (T), Heilbron, Highveld Ridge, Hofmeyr, Hoopstad, Jansenville, Johannesburg, Kempton Park, Klip River, Koster, Kranskop, Kriel, Krugersdorp, Letaba, Lichtenburg, Lions River, Lower Tugela, Lower Umfolozi, Marico, Mooi River, Mtonjaneni, Mtunzini, New Hanover, Nigel, Pearston, Pietersburg, Randburg, Roodepoort, Rustenburg, Sasolburg, Senekal, Somerset East, Springs, Steytlerville, Swartruggens, Umvoti, Ventersburg and Wolmaransstad; with effect from 1 November 1992 in the Magisterial Districts of Aberdeen, Clanwilliam, Ellisras, Fouriesburg, Messina, Namakwaland, Potgietersrus, Schweizer-Reneke, Soutpansberg, Standerton, Thabazimbi, Virginia, Vredenburg, Vredendal, Walvis Bay, Waterberg, Waterval-Boven and Wesselsbron; with effect from 1 December 1992 in the Magisterial Districts of Aliwal North, Beaufort West, Cathcart, Clocolan, Edenburg, Ermelo, Ficksburg, Fraserburg, Ladybrand, Port Shepstone, Queenstown, Reddersburg. Reitz, Smithfield, Sterkstroom, Stutterheim, Tarkastad, Umzinto, Wepener, Winburg and Zastron; with effect from 1 February 1993 in the Magisterial Districts of Amersfoort, Barkly East, Bethulie, Britstown, Carnarvon, Colesberg, De Aar, Delareyville, Elliot, Fauresmith, Hanover, Hopetown, Indwe, Kenhardt, Koffiefontein, Kuruman, Maclear, Phalaborwa, Philipstown, Postmasburg, Prieska, Prince Albert, Randfontein, Richmond (C), Trompsburg, Victoria West, Vryburg, Westonaria and Wodehouse; with effect from 1 April 1993 in the Magisterial Districts of Balfour, Ixopo, Joubertina, Mount Currie, Piet Retief, Richmond (N), Wakkerstroom and Willowmore and with effect from 1 May 1993 in the Magisterial Districts of Bredasdorp, Heidelberg (C), Hermanus, Middelburg (C), Molteno, Newcastle, Paulpietersburg, Riversdale, Steynsburg, Swellendam, Utrecht, Volksrust and Vryheid)

(i) imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board.

(Section 276(1)(i) added by section 41(a) of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg; with effect from 1 April 1992 in the Magisterial Districts of Adelaide, Albany, Alexandria, Bathurst, Bedford, Bloemfontein, Botshabelo, Brandfort, Caledon, Camperdown, Ceres, East London, Fort Beaufort, Groblersdal, Hennenman, King William's Town, Komga. Koppies, Kroonstad, Krugersdorp, Laingsburg, Letaba, Lindley, Malmesbury. Middelburg (T), Montagu, Moutse, Odendaalsrus, Paarl, Parys, Petrusburg, Pietermaritzburg, Pietersburg, Robertson, Roodepoort, Somerset West, Stellenbosch, Strand, Sutherland, Tulbagh, Vredefort, Welkom, Wellington, Witbank and Worcester; with effect from 8 May 1992 in the Magisterial Districts of Alberton, Barkly West, Benoni, Boksburg, Boshof, Bothaville, Brakpan, Calitzdorp, Chatsworth, Durban, George, Germiston, Hankey, Heidelberg (T), Herbert, Humansdorp, Inanda, Jacobsdal. Kempton Park, Kimberley, Kirkwood, Klerksdorp, Knysna, Ladismith (C), Lydenburg, Mossel Bay. Nelspruit, Nigel, Oberholzer, Oudtshoorn, Pilgrim's Rest, Pinetown, Port Elizabeth, Potchefstroom, Springs, Uitenhage, Uniondale, Ventersdorp, Viljoenskroon, Warrenton and White River; with effect from 1 June 1992 in the Magisterial Districts of Johannesburg, Randburg, Vanderbijlpark and Vereeniging; with effect from 1 August 1992 in the Magisterial Districts of Barberton, Belfast, Bergville, Bethal, Bethlehem, Bloemhof, Carolina, Coligny, Cradock, Delmas, Dundee, Eshowe, Estcourt, Frankfort, Glencoe, Gordonia, Graaff-Reinet, Harrismith, Heilbron, Highveld Ridge, Hofmeyr, Hoopstad, Jansenville, Klip River, Koster, Kranskop, Kriel, Lichtenburg, Lions River, Lower Tugela, Lower Umfolozi, Marico, Mooi River, Mtonjaneni, Mtunzini, New Hanover, Pearston, Rustenburg, Sasolburg, Senekal, Somerset East, Steytlerville, Swartruggens, Umvoti, Ventersburg and Wolmaransstad; with effect from 1 September 1992 in the Magisterial Districts of Aberdeen, Clanwilliam, Ellisras, Fouriesburg, Messina, Namakwaland, Potgietersrus, Schweizer-Reneke, Soutpansberg, Standerton, Thabazimbi, Virginia, Vredenburg, Vredendal, Walvis Bay, Waterberg, Waterval-Boven and Wesselsbron; with effect from 1 October 1992 in the Magisterial Districts of Aliwal North, Beaufort West, Cathcart, Clocolan, Edenburg, Ermelo, Ficksburg, Fraserburg, Ladybrand, Port Shepstone, Queenstown, Reddersburg, Reitz, Smithfield, Sterkstroom, Stutterheim, Tarkastad, Umzinto, Wepener, Winburg and Zastron; with effect from 1 November 1992 in the Magisterial Districts of Amersfoort, Bethulie, Britstown, Carnarvon, Colesberg, De Aar, Delareyville, Fauresmith, Hanover, Hopetown, Kenhardt, Koffiefontein, Kuruman, Phalaborwa, Philipstown, Postmasburg, Prieska, Randfontein, Richmond (C), Trompsburg, Victoria West, Vryburg and Westonaria; with effect from 1 December 1992 in the Magisterial Districts of Barkly East, Elliot, Indwe, Maclear, Prince Albert and Wodehouse; with effect from 1 February 1993 in the Magisterial Districts of Balfour, Ixopo, Joubertina, Mount Currie, Piet Retief, Richmond (N), Wakkerstroom and Willowmore; with effect from 1 March 1993 in the Magisterial Districts of Bredasdorp, Heidelberg (C), Hermanus, Middelburg (C), Molteno, Newcastle, Paulpietersburg, Riversdale, Steynsburg, Swellendam, Utrecht, Volksrust and Vryheid and with effect from 1 April 1993 in the remainder of the Magisterial Districts)

(Section 276(1)(i) substituted by section 20 of Act 87 of 1997)

(2) Save as is otherwise expressly provided by this Act, no provision thereof shall be construed -

(a) as authorizing any court to impose any sentence other than or any sentence in excess of the sentence which that court may impose in respect of any offence; or

(b) as derogating from any authority specially conferred upon any court by any law to impose any other punishment or to impose any forfeiture in addition to any other punishment.

(3) Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court-

(a) from imposing imprisonment together with correctional supervision; or

(b) from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence, whether under the common law or a statutory provision, irrespective of whether the law in question provides for such or any other punishment: Provided that any punishment contemplated in this paragraph may not be imposed in any case where the court is obliged to impose a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997.

(Section 276(3)(b) amended by section 5 of Act 22 of 2005)

(Section 276(3) added by section 41(b) of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom)

(Section 276(3) substituted by section 18 of Act 139 of 1992 with effect from 15 August 1991)

Section 276(3) added by section 41(b) of Act 122 of 1991 with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg; with effect from 1 August 1992 in the Magisterial Districts of Adelaide, Albany, Alexandria, Barkly West, Bathurst, Bedford, Bloemfontein, Boshof, Bothaville, Botshabelo, Brandfort, Caledon, Calitzdorp, Camperdown, Ceres, Chatsworth, Durban, East London, Fort Beaufort, George, Groblersdal, Hankey, Hennenman, Herbert, Humansdorp, Inanda, Jacobsdal, Kimberley, King William's Town, Kirkwood, Klerksdorp, Knysna, Komga, Koppies, Kroonstad, Ladismith (C), Laingsburg, Lindley, Lydenburg, Malmesbury, Middelburg (T), Montagu, Mossel Bay, Moutse, Nelspruit, Oberholzer, Odendaalsrus, Oudtshoorn, Paarl, Parys, Pilgrim's Rest, Petrusburg, Pietermaritzburg, Pinetown, Port Elizabeth, Potchefstroom, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Tulbagh, Uitenhage, Uniondale, Vanderbijlpark, Ventersdorp, Vereeniging, Viljoenskroon, Vredefort, Warrenton, Welkom, Wellington, Witbank, White River and Worcester; with effect from 1 October 1992 in the Magisterial Districts of Alberton, Barberton, Belfast, Benoni, Bergville, Bethal, Bethlehem, Bloemhof, Boksburg, Brakpan, Carolina, Coligny, Cradock, Delmas, Dundee, Eshowe, Estcourt, Frankfort, Germiston, Glencoe, Gordonia, Graaff-Reinet, Harrismith, Heidelberg (T), Heilbron, Highveld Ridge, Hofmeyr, Hoopstad, Jansenville, Johannesburg, Kempton Park, Klip River, Koster, Kranskop, Kriel, Krugersdorp, Letaba, Lichtenburg, Lions River, Lower Tugela, Lower Umfolozi, Marico, Mooi River, Mtonjaneni, Mtunzini, New Hanover, Nigel, Pearston, Pietersburg, Randburg, Roodepoort, Rustenburg, Sasolburg, Senekal, Somerset East, Springs, Steytlerville, Swartruggens, Umvoti, Ventersburg and Wolmaransstad; with effect from 1 November 1992 in the Magisterial Districts of Aberdeen, Clanwilliam, Ellisras, Fouriesburg, Messina, Namakwaland, Potgietersrus, Schweizer-Reneke, Soutpansberg, Standerton, Thabazimbi, Virginia, Vredenburg, Vredendal,

Walvis Bay, Waterberg, Waterval-Boven and Wesselsbron; with effect from 1 December 1992 in the Magisterial Districts of Aliwal North, Beaufort West, Cathcart, Clocolan, Edenburg, Ermelo, Ficksburg, Fraserburg, Ladybrand, Port Shepstone, Queenstown, Reddersburg. Reitz, Smithfield, Sterkstroom, Stutterheim, Tarkastad, Umzinto, Wepener, Winburg and Zastron; with effect from 1 February 1993 in the Magisterial Districts of Amersfoort, Barkly East, Bethulie, Britstown, Carnarvon, Colesberg, De Aar, Delareyville, Elliot, Fauresmith, Hanover, Hopetown, Indwe, Kenhardt, Koffiefontein, Kuruman, Maclear, Phalaborwa, Philipstown, Postmasburg, Prieska, Prince Albert, Randfontein, Richmond (C), Trompsburg, Victoria West, Vryburg, Westonaria and Wodehouse; with effect from 1 April 1993 in the Magisterial Districts of Balfour, Ixopo, Joubertina, Mount Currie, Piet Retief, Richmond (N), Wakkerstroom and Willowmore and with effect from 1 May 1993 in the Magisterial Districts of Bredasdorp, Heidelberg (C), Hermanus, Middelburg (C), Molteno, Newcastle, Paulpietersburg, Riversdale, Steynsburg, Swellendam, Utrecht, Volksrust and Vryheid)

(Section 276(3) substituted by section 5 of Act 55 of 2003)

276A. Imposition of correctional supervision, and conversion of imprisonment into correctional supervision and *vice versa*

(1) Punishment shall, subject to the provisions of section 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(h)-

(a) after a report of a probation officer or a correctional official has been placed before the court; and

(b) for a fixed period not exceeding three years, or in the case of a conviction for any offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), for a fixed period not exceeding five years.

(Section 276(1)(b) substituted by section 68 of Act 32 of 2007)

(Section 276(1)(b) substituted by section 9(a) of Act 42 of 2013)

(Section 276A(1) inserted by section 42 of Act 122 of 1991 with effect from 1 August 1992 in the Magisterial Districts of Adelaide, Albany, Alexandria, Barkly West, Bathurst, Bedford, Bloemfontein, Boshof, Bothaville, Botshabelo, Brandfort, Caledon, Calitzdorp, Camperdown, Ceres, Chatsworth, Durban, East London, Fort Beaufort, George, Groblersdal, Hankey, Hennenman, Herbert, Humansdorp, Inanda, Jacobsdal, Kimberley, King William's Town, Kirkwood, Klerksdorp, Knysna, Komga, Koppies, Kroonstad, Ladismith (C), Laingsburg, Lindley, Lydenburg, Malmesbury, Middelburg (T), Montagu, Mossel Bay, Moutse, Nelspruit, Oberholzer, Odendaalsrus, Oudtshoorn, Paarl, Parys, Pilgrim's Rest, Petrusburg, Pietermaritzburg, Pinetown, Port Elizabeth, Potchefstroom, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Tulbagh, Uitenhage, Uniondale, Vanderbijlpark, Ventersdorp, Vereeniging, Viljoenskroon, Vredefort, Warrenton, Welkom, Wellington, Witbank, White River and Worcester; with effect from 1 October 1992 in the Magisterial Districts of Alberton, Barberton, Belfast, Benoni, Bergville, Bethal, Bethlehem, Bloemhof, Boksburg, Brakpan, Carolina, Coligny, Cradock, Delmas, Dundee, Eshowe, Estcourt, Frankfort, Germiston, Glencoe, Gordonia, Graaff-Reinet, Harrismith, Heidelberg (T), Heilbron, Highveld Ridge, Hofmeyr, Hoopstad, Jansenville,

Johannesburg, Kempton Park, Klip River, Koster, Kranskop, Kriel, Krugersdorp, Letaba, Lichtenburg, Lions River, Lower Tugela, Lower Umfolozi, Marico, Mooi River, Mtonjaneni, Mtunzini, New Hanover, Nigel, Pearston, Pietersburg, Randburg, Roodepoort, Rustenburg, Sasolburg, Senekal, Somerset East, Springs, Steytlerville, Swartruggens, Umvoti, Ventersburg and Wolmaransstad; with effect from 1 November 1992 in the Magisterial Districts of Aberdeen, Clanwilliam, Ellisras, Fouriesburg, Messina, Namakwaland, Potgietersrus, Schweizer-Reneke, Soutpansberg, Standerton, Thabazimbi, Virginia, Vredenburg, Vredendal, Walvis Bay, Waterberg, Waterval-Boven and Wesselsbron; with effect from 1 December 1992 in the Magisterial Districts of Aliwal North, Beaufort West, Cathcart, Clocolan, Edenburg, Ermelo, Ficksburg, Fraserburg, Ladybrand, Port Shepstone, Queenstown, Reddersburg. Reitz, Smithfield, Sterkstroom, Stutterheim, Tarkastad, Umzinto, Wepener, Winburg and Zastron; with effect from 1 February 1993 in the Magisterial Districts of Amersfoort, Barkly East, Bethulie, Britstown, Carnarvon, Colesberg, De Aar, Delareyville, Elliot, Fauresmith, Hanover, Hopetown, Indwe, Kenhardt, Koffiefontein, Kuruman, Maclear, Phalaborwa, Philipstown, Postmasburg, Prieska, Prince Albert, Randfontein, Richmond (C), Trompsburg, Victoria West, Vryburg, Westonaria and Wodehouse; with effect from 1 April 1993 in the Magisterial Districts of Balfour, Ixopo, Joubertina, Mount Currie, Piet Retief, Richmond (N), Wakkerstroom and Willowmore and with effect from 1 May 1993 in the Magisterial Districts of Bredasdorp, Heidelberg (C), Hermanus, Middelburg (C), Molteno, Newcastle, Paulpietersburg, Riversdale, Steynsburg, Swellendam, Utrecht, Volksrust and Vryheid)

(Section 276A(1) substituted by section 99(1) of Act 75 of 2008)

(2) Punishment shall, subject to the provisions of section 77 of the Child Justice Act, 2008, only be imposed under section 276(1)(i) -

(Words preceding section 276(2)(a) substituted by section 9(b) of Act 42 of 2013)

(a) if the court is of the opinion that the offence justifies the imposing of imprisonment, with or without the option of a fine, for a period not exceeding five years; and

(b) for a fixed period not exceeding five years.

(Section 276A(2) inserted by section 42 of Act 122 of 1991 with effect from 1 April 1992)

(Section 276A(2) substituted by section 99(1) of Act 75 of 2008)

(2A) Punishment imposed under paragraph (h) or (i) of section 276(1) on a person convicted of any sexual offence shall, if practicable and if the convicted person demonstrates the potential to benefit from treatment, include the attendance of and participation in a sex offence specific treatment programme as prescribed in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, the cost of which shall be borne by the convicted person himself or herself.

(Section 276(2A) inserted by section 68 of Act 32 of 2007)

(3)

(a) Where a person has been sentenced by a court to imprisonment for a period-

(i) not exceeding five years; or

(ii) exceeding five years, but his date of release in terms of the provisions of the Correctional Services Act, 1959 (Act 8 of 1959), and the regulations made thereunder is not more than five years in the future,

and such a person has already been admitted to a prison, the Commissioner or a parole board may, if he or it is of the opinion that such a person is fit to be subjected to correctional supervision, apply to the clerk or registrar of the court, as the case may be, to have that person appear before the court *a quo* in order to reconsider the said sentence.

(Words following upon section 276A(3)(a)(ii) substituted by section 46(a) of Act 129 of 1993)

(Words following upon section 276A(3)(a)(ii) substituted by section 21(a) of Act 87 of 1997)

(b) On receipt of any application referred to in paragraph (a) the clerk or registrar of the court, as the case may be, shall, after consultation with the prosecutor, set the matter down for a specific date on the roll of the court concerned.

(Section 276A(3)(b) substituted by section 46(b) of Act 129 of 1993)

(c) The clerk or registrar of the court, as the case may be, shall for purposes of the reconsideration of the sentence in accordance with this subsection-

(Words preceding section 276A(3)(c)(i) substituted by section 46(c) of Act 129 of 1993)

(i) within a reasonable time before the date referred to in paragraph (b) submit the case record to the judicial officer who imposed the sentence or, if he is not available, another judicial officer of the same court: Provided that if the evidence in the case has been recorded by mechanical means, only such parts of the record as may be indicated as necessary by such a judicial officer, shall be transcribed for the purposes of this subsection;

(ii) inform the Commissioner or the parole board in writing of the date for which the matter has been set down on the roll and request him or it to furnish him with a written motivated recommendation before that date for submission to the judicial officer; and

(Section 276A(3)(c)(ii) substituted by section 21(b) of Act 87 of 1997)

(iii) submit any recommendation referred to in subparagraph (ii) to that judicial officer.

(d) Whenever a court reconsiders a sentence in terms of this subsection, it shall have the same powers as if it were considering sentence after conviction of a person and the procedure adopted at such proceedings shall apply *mutatis mutandis* during such reconsideration: Provided that if the person concerned concurs thereto in writing, the proceedings contemplated in this subsection may be concluded in his absence: Provided further that he may nevertheless be represented at such proceedings or cause to submit written representations to the court.

(e) After a court has reconsidered a sentence in terms of this subsection, it may-

(i) confirm the sentence or order of the court *a quo*;

(ii) convert the sentence into correctional supervision on the conditions it may deem fit; or

(iii) impose any other proper sentence: Provided that the last-mentioned sentence, if imprisonment, shall not exceed the period of the unexpired portion of imprisonment still to be served at that point.

(Section 276A(3) inserted by section 42 of Act 122 of 1991 with effect from 1 April 1992)

(4)

(a) A court, whether constituted differently or not, which has imposed a punishment referred to in subsection (1) or (2) on a person or has converted his sentence under subsection (3)(e)(ii), may at any time, if it is found from a motivated recommendation by a probation officer, the Commissioner or the parole board that that person is not fit to be subject to correctional supervision or to serve the imposed punishment, reconsider that punishment and impose any other proper punishment.

(Section 276A(4)(a) substituted by section 21(c) of Act 87 of 1997)

(b) The procedure referred to in subsection (3) shall apply *mutatis mutandis* to the reconsideration of any punishment under this subsection.

(Section 276A(4) inserted by section 42 of Act 122 of 1991 with effect from 1 April 1992)

(Section 276A inserted by section 42 of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg)

276B. Fixing of non-parole-period

(1)

(a) If a court sentences a person convicted of an offence to imprisonment for a period of two years or longer, the court may as part of the sentence, fix a period during which the person shall not be placed on parole.

(b) Such period shall be referred to as the non-parole-period, and may not exceed two thirds of the term of imprisonment imposed or 25 years, whichever is the shorter.

(2) If a person who is convicted of two or more offences is sentenced to imprisonment and the court directs that the sentences of imprisonment shall run concurrently, the court shall, subject to subsection (1)(b), fix the non-parole-period in respect of the effective period of imprisonment.

(Section 276B inserted by section 22 of Act 87 of 1997)

277. …….

(Section 277 substituted by section 4 of Act 107 of 1990)
(Section 277 repealed by section 35 of Act 105 of 1997)

278. …….

(Section 278 repealed by section 35 of Act 105 of 1997)

279. …….

(Section 279 amended by section 5 of Act 107 of 1990)
(Section 279 amended by section 4 of Act 18 of 1996)
(Section 279 repealed by section 35 of Act 105 of 1997)

280. Cumulative or concurrent sentences

(1) When a person is at any trial convicted of two or more offences or when a person under sentence or undergoing sentence is convicted of another offence, the court may sentence him to such several punishments for such offences or, as the case may be, to the punishment for such other offence, as the court is competent to impose.

(2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.

(Section 280(2) substituted by section 47(a) of Act 129 of 1993)

(3) Such punishments, when consisting of correctional supervision referred to in section 276(1)(h), shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such punishments of correctional supervision shall run concurrently: Provided that if such punishments in the aggregate exceed a period of three years, a period of not more than three years from the date on which the first of the said punishments has commenced shall be served, unless the court, when imposing sentence, otherwise directs.

(Section 280(3) added by section 47(b) of Act 129 of 1993)

281. Interpretation of certain provisions in laws relating to imprisonment and fines

In construing any provision of any law (not being an Act of Parliament passed on or after the first day of September, 1959, or anything enacted by virtue of powers conferred by such an Act), in so far as it prescribes or confers the powers to prescribe a punishment for any offence, any reference in that law -

(a) to imprisonment with or without any form of labour, shall be construed as a reference to imprisonment only;

(b) to any period of imprisonment of less than three months which may not be exceeded in imposing or prescribing a sentence of imprisonment, shall be construed as a reference to a period of imprisonment of three months;

(c) to any fine of less than fifty rand which may not be exceeded in imposing or prescribing a fine, shall be construed as a reference to a fine of fifty rand.

282. Antedating sentence of imprisonment

Whenever any sentence of imprisonment, imposed on any person on conviction for an offence, is set aside on appeal or review and any sentence of imprisonment or other sentence of imprisonment is thereafter imposed on such person in respect of such offence in place of the sentence of imprisonment imposed on conviction, or any other offence which is substituted for that offence on appeal or review, the sentence which was later imposed may, if the court imposing it is satisfied that the person concerned has served any part of the sentence of imprisonment imposed on conviction, be antedated by the court to a specified date, which shall not be earlier than the date on which the sentence of imprisonment imposed on conviction was imposed, and thereupon the sentence which was later imposed shall be deemed to have been imposed on the date so specified.

(Section 282 substituted by section 13 of Act 5 of 1991)
(Section 282 amended by section 48 of Act 129 of 1993)
(Section 282 substituted by section 36 of Act 105 of 1997)

283. Discretion of court as to punishment

(1) A person liable to a sentence of imprisonment for life or for any period, may be sentenced to imprisonment for any shorter period, and a person liable to a sentence of a fine of any amount may be sentenced to a fine of any lesser amount.

(2) The provisions of subsection (1) shall not apply with reference to any offence for which a minimum penalty is prescribed in the law creating the offence or prescribing a penalty therefor.

284. Minimum period of imprisonment four days

No person shall be sentenced by any court to imprisonment for a period of less than four days unless the sentence is that the person concerned be detained until the rising of the court.

285. Periodical imprisonment

(1) A court convicting a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment, may, in lieu of any other punishment, sentence such person to

undergo in accordance with the laws relating to prisons, periodical imprisonment for a period of not less than one hundred hours and not more than two thousand hours.

(2)

(a) The court which imposes a sentence of periodical imprisonment upon any person shall cause to be served upon him a notice in writing directing him to surrender himself on a date and at a time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as possible thereafter, to the officer in charge of a place so specified, whether within or outside the area of jurisdiction of the court, for the purpose of undergoing such imprisonment

(Section 285(2) renumbered to 285(2)(a) by section 16 of Act 33 of 1986)

(b) the court which tries any person on a charge of contravening subsection (4)(a) shall, subject to subsection (5), cause a notice as contemplated in paragraph (a) to be served on that person.

(Section 285(2)(b) added by section 16 of Act 33 of 1986)

(3) A copy of the said notice shall serve as a warrant for the reception into custody of the convicted person by the said officer.

(4) Any person who -

(a) without lawful excuse, the proof whereof shall be on such person, fails to comply with a notice issued under subsection (2); or

(b) when surrendering himself for the purpose of undergoing periodical imprisonment, is under the influence of intoxicating liquor or drugs or the like; or

(c) impersonates or falsely represents himself to be a person who has been directed to surrender himself for the purpose of undergoing periodical imprisonment,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.

(5) If, before the expiration of any sentence of periodical imprisonment imposed upon any person for any offence that person-

(a) is undergoing a punishment of any other form of detention imposed by any court; or

(b) after having surrendered himself or herself pursuant to the notice issued under subsection (2), without lawful excuse, the proof whereof shall be on that person, thereafter fails to surrender himself or herself for the purpose of undergoing periodical imprisonment, as required.

any magistrate before whom that person is brought, may set aside the unexpired portion of the sentence of periodical imprisonment and, after considering the evidence recorded in respect of the offence in question, may impose in lieu of any unexpired portion any punishment within the limits of his or her jurisdiction and of any punishment prescribed by any law as a punishment for the offence in question.

(Section 285(5) substituted by section 12(a) of Act 66 of 2008)

(6) Any magistrate may, if it appears from information on oath that a person who has been sentenced in terms of subsection (1) has failed to surrender himself or herself to undergo imprisonment as provided for in this section, issue a warrant for the arrest of that person in order to deal with him or her in terms of subsection (5)(b).

(Section 285(6) added by section 12(b) of Act 66 of 2008)

286. Declaration of certain persons as habitual criminals

(1) Subject to the provisions of subsection (2), a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person habitually commits offences and that the community should be protected against him, declare him an habitual criminal, in lieu of the imposition of any other punishment for the offence or offences of which he is convicted.

(2) No person shall be declared an habitual criminal -

(a) if he is under the age of eighteen years; or

(b) …….

(Section 286(2)(b) deleted by section 6 of Act 107 of 1990)

(c) if in the opinion of the court the offence warrants the imposition of punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding 15 years.

(Section 286(2)(c) substituted by section 37 of Act 105 of 1997)

(3) A person declared an habitual criminal shall be dealt with in accordance with the laws relating to prisons.

286A. Declaration of certain persons as dangerous criminals

(1) Subject to the provisions of subsections (2), (3) and 4, a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person represents a danger to the physical or mental well-being of other persons and that the community should be protected against him, declare him a dangerous criminal.

(2)

(a) If it appears to a court referred to in subsection (1) or if it is alleged before such court that the accused is a dangerous criminal, the court may after conviction direct that the matter be enquired into and be reported on in accordance with the provisions of subsection (3).

(b) Before the court commits an accused for an enquiry in terms of subsection (3), the court shall inform such accused of its intention and explain to him the provisions of this section and of section 286B as well as the gravity of those provisions.

(3)

(a) Where a court issues a direction under subsection (2)(a), the relevant enquiry shall be conducted and be reported on-

(i) by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court; and

(ii) by a psychiatrist appointed by the accused if he so wishes.

(b)

(i) The court may for the purposes of such enquiry commit the accused to a psychiatric hospital or other place designated by the court, for such periods, not exceeding 30 days at a time, as the court may from time to time determine, and if an accused is in custody when he is so committed, he shall, while he is so committed, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such committal.

(ii) When the period of committal is extended for the first time under subparagraph (i), such extension may be granted in the absence of the accused unless the accused or his legal representative requests otherwise.

(c) The relevant report shall be in writing and shall be submitted in triplicate to the registrar or the clerk of the court, as the case may be, who shall make a copy thereof available to the prosecutor and the accused or his legal representative.

(d) The report shall-

(i) include a description of the nature of the enquiry; and

(ii) include a finding as to the question whether the accused represents a danger to the physical or mental well-being of other persons.

(e) If the persons conducting the enquiry are not unanimous in their finding under paragraph (d)(ii), such fact shall be mentioned in the report and each of such persons shall give his finding on the matter in question.

(f) Subject to the provisions of paragraph (g), the contents of the report shall be admissible in evidence at criminal proceedings.

(g) A statement made by an accused at the enquiry shall not be admissible in evidence against the accused at criminal proceedings, except to the extent to which it may be relevant to the determination of the question whether the accused is a dangerous criminal or not, in which event such statement shall be admissible notwithstanding that it may otherwise be inadmissible.

(h) A psychiatrist appointed under paragraph (a), other than a psychiatrist appointed by an accused, shall, subject to the provisions of paragraph (i), be appointed from the list of psychiatrists referred to in section 79(9).

(i) Where the list compiled and kept in terms of section 79(9) does not include a sufficient number of psychiatrists who may conveniently be appointed for any enquiry under this subsection, a psychiatrist may be appointed for the purposes of such enquiry notwithstanding that his name does not appear on such list.

(j) A psychiatrist designated or appointed under paragraph (a) and who is not in the full-time service of the State, shall be compensated for his services in connection with the enquiry, including giving evidence, from public funds in accordance with a tariff determined by the Minister in consultation with the Minister of State Expenditure.

(k) For the purposes of this subsection a psychiatrist means a person registered as a psychiatrist under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974).

(4)

(a) If the finding contained in the report is the unanimous finding of the persons who under subsection (3) conducted the enquiry, and the finding is not disputed by the prosecutor or the accused, the court may determine the matter on such report without hearing further evidence.

(b) If the said finding is not unanimous or, if unanimous, is disputed by the prosecutor or the accused, the court shall determine the matter after hearing evidence, and the prosecutor and the accused may to that end present evidence to the court, including the evidence of any person who under subsection (3)(a) conducted the enquiry.

(c) Where the said finding is disputed, the party disputing the finding may subpoena and cross-examine any person who under subsection (3)(a) conducted the enquiry.

(Section 286A inserted by section 21 of Act 116 of 1993)

286B. Imprisonment for indefinite period

(1) The court which declares a person a dangerous criminal shall-

(a) sentence such person to undergo imprisonment for an indefinite period; and

(b) direct that such person be brought before the court on the expiration of a period determined by it, which shall not exceed the jurisdiction of the court.

(2) A person sentenced under subsection (1) to undergo imprisonment for an indefinite period shall, notwithstanding the provisions of subsection (1)(b) but subject to the provisions of subsection (3), within seven days after the expiration of the period contemplated in subsection (1)(b) be brought before the court which sentenced him in order to enable such court to reconsider the said sentence: Provided that in the absence of the judicial officer who sentenced the person any other judicial officer of that court may, after consideration of the evidence recorded and in the presence of the person, make such order as the judicial officer who is absent could lawfully have made in the proceedings in question if he had not been absent.

(3)

(a) The Commissioner may, if he is of the opinion that owing to practical or other considerations it is desirable that a court other than the court which sentenced the person should reconsider such sentence after the expiration of the period contemplated in subsection (1)(b), with the concurrence of the attorney-general in whose jurisdiction such other court is situated, apply to the registrar or to the clerk of the court, as the case may be, of the other court to have such person appear before the other court for that purpose: Provided that such sentence shall only be reconsidered by a court with jurisdiction equal to that of the court which sentenced the person.

(b) On receipt of any application referred to in paragraph (a), the registrar or the clerk of the court, as the case may be, shall, after consultation with the prosecutor, set the matter down for a date which shall not be later than seven days after the expiration of the period contemplated in subsection (1)(b).

(c) The registrar or the clerk of the court, as the case may be, shall for the purpose of the reconsideration of the sentence-

(i) within a reasonable time before the date contemplated in paragraph (b) submit the case record to the judicial officer who is to reconsider the sentence; and

(ii) inform the Commissioner in writing of the date for which the matter has been set down.

(4)

(a) Whenever a court reconsiders a sentence in terms of this section, it shall have the same powers as it would have had if it were considering sentence after conviction of a person and the procedure adopted at such proceedings shall apply *mutatis mutandis* during such reconsideration: Provided that the court shall make no finding before it has considered a report of a parole board as contemplated in section 5C of the Correctional Services Act, 1959 (Act No.8 of 1959).

(b) After a court has considered a sentence in terms of this section, it may-

(i) confirm the sentence of imprisonment for an indefinite period, in which case the court shall direct that such person be brought before the court on the expiration of a further period determined by it, which shall not exceed the jurisdiction of the court;

(ii) convert the sentence into correctional supervision on the conditions it deems fit; or

(iii) release the person unconditionally or on such conditions as it deems fit.

(5) A court which has converted the sentence of a person under subsection (4)(b)(ii) may, whether differently constituted or not-

(a) at any time, if it is found from a motivated recommendation by the Commissioner that that person is not fit to be subject to correctional supervision; or

(b) after such person has been brought before the court in terms of section 84B of the Correctional Services Act, 1959 (Act No.8 of 1959),

reconsider that sentence and-

(i) confirm the sentence of imprisonment for an indefinite period, in which case the court shall direct that such person be brought before the court on the expiration of a further period determined by it, which shall not exceed the jurisdiction of the court;

(ii) release the person unconditionally or on such conditions as it deems fit; or

(iii) where the person is brought before the court in terms of paragraph (b), again place the person under correctional supervision on the conditions it deems fit and for a period which shall not exceed the unexpired portion of the period of correctional supervision as converted in terms of subsection (4)(b)(ii).

(6) For the purposes of subsection (4)(b)(i) or (5)(i), it shall not be regarded as exceeding the jurisdiction of the regional court if the further period contemplated in those subsections and the period contemplated in subsection (1)(b), together exceed such court's jurisdiction.

(7) At the expiration of the further period contemplated in subsection (4)(b)(i) or (5)(i), the provisions of subsections (2) up to and including (6), as well as of this subsection, shall *mutatis mutandis* apply.

(Section 286B inserted by section 21 of Act 116 of 1993)

287. Imprisonment in default of payment of fine

(1) Whenever a court convicts a person of any offence punishable by a fine (whether with or without any other direct or alternative punishment), it may, in imposing a fine upon such person, impose, as a punishment alternative to such fine, a sentence of imprisonment of any period within the limits of its jurisdiction: Provided that, subject to the provisions of subsection (3), the period of such alternative sentence of imprisonment shall not, either alone or together with any period of imprisonment imposed as a direct punishment, exceed the longest period of imprisonment prescribed by any law as a punishment (whether direct or alternative) for such offence.

(2) Whenever a court has imposed upon any person a fine without an alternative sentence of imprisonment and the fine is not paid in full or is not recovered in full in terms of section 288, the court which passed sentence on such person (or if that court was a circuit local division of the Supreme Court, then the provincial or local division of the Supreme Court within whose area of jurisdiction such sentence was imposed) may issue a warrant directing that he be arrested and brought before the court, which may thereupon sentence him to such term of imprisonment as could have been imposed upon him as an alternative punishment in terms of subsection (1).

(3) Whenever by any law passed before the date of commencement of the General Law Amendment Act, 1935 (Act 46 of 1935), a court is empowered to impose upon a person convicted by such court of an offence, a sentence of imprisonment (whether direct or as an alternative to a fine) of a duration proportionate to the sum of a fine, that court may, notwithstanding such law, impose upon any person convicted of such offence in lieu of a sentence of imprisonment which is proportionate as aforesaid, any sentence of imprisonment within the limits of the jurisdiction of the court.

(4) Unless the court which has imposed a period of imprisonment as an alternative to a fine has directed otherwise, the Commissioner or a parole board may in his or its discretion at the commencement of the alternative punishment or at any point thereafter, if it does not exceed five years--

(Words preceding section 287(4)(a) substituted by section 23 of Act 87 of 1997)

(a) act as if the person were sentenced to imprisonment as referred to in section 276(1)(i); or

(b) apply in accordance with the provisions of section 276A(3) for the sentence to be reconsidered by the court *a quo*, and thereupon the provisions of section 276A(3) shall apply *mutatis mutandis* to such a case.

(Section 287(4) added by section 43 of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg and with effect from 1 April 1992 in the rest of the Republic)

288. Recovery of fine

(1)

(a) Whenever a person is sentenced to pay a fine, the court passing the sentence may, in its discretion, issue a warrant addressed to the sheriff or messenger of the court authorizing him to levy the amount of the fine by attachment and sale of any movable property belonging to such person although the sentence directs that, in default of payment of the fine, such person shall be imprisoned.

(b) The amount which may be levied shall be sufficient to cover, in addition to the fine, the costs and expenses of the warrant and of the attachment and sale thereunder.

(2) If the proceeds of the sale of the movable property are insufficient to satisfy the amount of the fine and the costs and expenses aforesaid, a superior court may issue a warrant, or, in the case of a sentence by any lower court, authorize such lower court to issue a warrant for the levy against the immovable property of such person of the amount unpaid.

(3) When a person is sentenced only to a fine or, in default of payment of the fine, imprisonment and the court issues a warrant under this section, it may suspend the execution of the sentence of imprisonment and may release the person upon his executing a bond with or without sureties as the court thinks fit, on condition that he appears before such court or some other court on the day appointed for the return of such warrant, such day being not more than fifteen days from the time of executing the bond, and in the event of the amount of the fine not being recovered, the sentence of imprisonment may be carried into execution forthwith or may be suspended as before for a further period or periods of not more than fifteen days, as the court may deem fit.

(4) In any case in which an order for the payment of money is made on non-recovery whereof imprisonment may be ordered, and the money is not paid forthwith, the court may require the person ordered to make such payment to enter into a bond as prescribed in subsection (3), and in default of his doing so, may at once pass sentence of imprisonment as if the money had not been recovered.

289. Court may enforce payment of fine

Where a person is sentenced to pay a fine, whether with or without an alternative period of imprisonment, the court may in its discretion, without prejudice to any other power under this Act relating to the payment of a fine, enforce payment of the fine, whether as to the whole or any part thereof -

(a) by the seizure of money upon the person concerned;

(b) if money is due or is to become due as salary or wages from any employer of the person concerned -

(i) by from time to time ordering such employer to deduct a specified amount from the salary or wages so due and to pay over such amount to the clerk of the court in question; or

(ii) by ordering such employer to deduct from time to time a specified amount from the salary or wages so due and to pay over such amount to the clerk of the court in question.

290. …….

(Section 290 amended by section 9 of Act 26 of 1987)
(Section 290 amended by section 7 of Act 107 of 1990)
(Section 290 amended by section 44 of Act 122 of 1991)
(Section 290 amended by section 2 of Act 33 of 1997)
(Section 290 repealed by section 99(1) of Act 75 of 2008)

291. …….

(Section 291 substituted by section 10 of Act 26 of 1987)
(Section 291 amended by section 45 of Act 122 of 1991)
(Section 291 repealed by section 99(1) of Act 75 of 2008)

292. …….

(Section 292 amended by section 17 of Act 33 of 1986)
(Section 292 repealed by section 2 of Act 33 of 1997)

293. …….

(Section 293 amended by section 18 of Act 33 of 1986)
(Section 293 repealed by section 2 of Act 33 of 1997)

294. …….

(Section 294 amended by section 19 of Act 33 of 1986)
(Section 294 repealed by section 2 of Act 33 of 1997)

295. …….

(Section 295 repealed by section 2 of Act 33 of 1997)

296. Committal to treatment centre

(1) A court convicting any person of any offence may, in addition to or in lieu of any sentence in respect of such offence, order that the person be detained at a treatment centre established under the Prevention and Treatment of Drug Dependency Act, 1992, if the court is satisfied from the evidence or from any other information placed before it, which shall in either of the said cases include the report of a probation officer, that such person is a person as is described in section 21(1) of the said Act, and such order shall for the purposes of the said Act be deemed to have been made under section 22 thereof: Provided that such order shall not be made in addition to any sentence of imprisonment (whether direct or as an alternative to a fine) unless the operation of the whole of such sentence is suspended.

(2)

(a) Where a court has referred a person to a treatment centre under subsection (1) and such person is later found not to be fit for treatment in such treatment centre, such person may be dealt with *mutatis mutandis* in accordance with the provisions of section 276A(4).

(b) For the purposes of the provisions of paragraph (a) the expression 'a probation officer or the Commissioner' in section 276A(4) shall be construed as the person at the head of the treatment centre or a person authorized by him.

(Section 296 amended by section 15 of Act 56 of 1979)

(Section 296 amended by section 7 of Act 64 of 1982)

(Section 296 amended by section 11 of Act 26 of 1987)

(Section 296 amended by section 46 of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg and with effect from 1 August 1992 in the remainder of the Magisterial Districts)

(Section 296 substituted by section 51 of Act 20 of 1992)

297. Conditional or unconditional postponement or suspension of sentence, and caution or reprimand

(1) Where a court convicts a person of any offence, other than an offence in respect of which any law prescribes a minimum punishment, the court may in its discretion -

(a) postpone for a period not exceeding five years the passing of sentence and release the person concerned -

(i) on one or more conditions, whether as to -

(aa) compensation;

(bb) the rendering to the person aggrieved of some specific benefit or service in lieu of compensation for damage or pecuniary loss;

(cc) the performance without remuneration and outside the prison of some service for the benefit of the community under the supervision or control of an organization or institution which, or person who, in the opinion of the court, promotes the interests of the community (in this section referred to as community service);

(Section 297(1)(a)(i)(cc) substituted by section 20(a) of Act 33 of 1986)

(ccA) submission to correctional supervision;

(Section 297(1)(a)(i)(ccA) inserted by section 47 of Act 122 of 1991 with effect from 15 August 1991 in the Magisterial Districts of Pretoria and Wonderboom; with effect from 20 March 1992 in the Magisterial Districts of Bellville, Brits, Bronkhorstspruit, Cullinan, Goodwood, The Cape, Kuils River, Mitchells Plain, Simon's Town, Soshanguve, Warmbaths and Wynberg; with effect from 1 August 1992 in the Magisterial Districts of Adelaide, Albany, Alexandria, Barkly West, Bathurst, Bedford, Bloemfontein, Boshof, Bothaville, Botshabelo, Brandfort, Caledon, Calitzdorp, Camperdown, Ceres, Chatsworth, Durban, East London, Fort Beaufort, George, Groblersdal, Hankey, Hennenman, Herbert, Humansdorp, Inanda, Jacobsdal, Kimberley, King William's Town, Kirkwood, Klerksdorp, Knysna, Komga, Koppies, Kroonstad, Ladismith (C), Laingsburg, Lindley, Lydenburg, Malmesbury, Middelburg (T), Montagu, Mossel Bay, Moutse, Nelspruit, Oberholzer, Odendaalsrus, Oudtshoorn, Paarl, Parys, Pilgrim's Rest, Petrusburg, Pietermaritzburg, Pinetown, Port Elizabeth, Potchefstroom, Robertson, Somerset West, Stellenbosch, Strand, Sutherland, Tulbagh, Uitenhage, Uniondale, Vanderbijlpark, Ventersdorp, Vereeniging, Viljoenskroon, Vredefort, Warrenton, Welkom, Wellington, Witbank, White River and Worcester; with effect from 1 October 1992 in the Magisterial Districts of Alberton, Barberton, Belfast, Benoni, Bergville, Bethal, Bethlehem, Bloemhof, Boksburg, Brakpan, Carolina, Coligny, Cradock, Delmas, Dundee, Eshowe, Estcourt, Frankfort, Germiston, Glencoe, Gordonia, Graaff-Reinet, Harrismith, Heidelberg (T), Heilbron, Highveld Ridge, Hofmeyr, Hoopstad, Jansenville, Johannesburg, Kempton Park, Klip River, Koster, Kranskop, Kriel, Krugersdorp, Letaba, Lichtenburg, Lions River, Lower Tugela, Lower Umfolozi, Marico, Mooi River, Mtonjaneni, Mtunzini, New Hanover, Nigel, Pearston, Pietersburg, Randburg, Roodepoort, Rustenburg, Sasolburg, Senekal, Somerset East, Springs, Steytlerville, Swartruggens, Umvoti, Ventersburg and Wolmaransstad; with effect from 1 November 1992 in the Magisterial Districts of Aberdeen, Clanwilliam, Ellisras, Fouriesburg, Messina, Namakwaland, Potgietersrus, Schweizer-Reneke, Soutpansberg, Standerton, Thabazimbi, Virginia, Vredenburg, Vredendal, Walvis Bay, Waterberg, Waterval-Boven and Wesselsbron; with effect from 1 December 1992 in the Magisterial Districts of Aliwal North, Beaufort West, Cathcart, Clocolan, Edenburg, Ermelo, Ficksburg, Fraserburg, Ladybrand, Port Shepstone, Queenstown, Reddersburg. Reitz, Smithfield, Sterkstroom, Stutterheim, Tarkastad, Umzinto, Wepener, Winburg and Zastron; with effect from 1 February 1993 in the Magisterial Districts of Amersfoort, Barkly East, Bethulie, Britstown, Carnarvon, Colesberg, De Aar, Delareyville, Elliot, Fauresmith, Hanover, Hopetown, Indwe, Kenhardt, Koffiefontein, Kuruman, Maclear, Phalaborwa, Philipstown, Postmasburg, Prieska, Prince Albert, Randfontein, Richmond (C), Trompsburg, Victoria West, Vryburg, Westonaria and Wodehouse; with effect from 1 April 1993 in the Magisterial Districts

of Balfour, Ixopo, Joubertina, Mount Currie, Piet Retief, Richmond (N), Wakkerstroom and Willowmore and with effect from 1 May 1993 in the Magisterial Districts of Bredasdorp, Heidelberg (C), Hermanus, Middelburg (C), Molteno, Newcastle, Paulpietersburg, Riversdale, Steynsburg, Swellendam, Utrecht, Volksrust and Vryheid)

(dd) submission to instruction or treatment;

(ee) submission to the supervision or control (including control over the earnings or other income of the person concerned) of a probation officer as defined in the Probation Services Act, 1991 (Act No. 116 of 1991);

(Section 297(1)(a)(i)(ee) amended by section 4 of Act 18 of 1996)

(ff) the compulsory attendance or residence at some specified centre for a specified purpose;

(gg) good conduct;

(hh) any other matter,

and order such person to appear before the court at the expiration of the relevant period; or

(ii) unconditionally, and order such person to appear before the court, if called upon before the expiration of the relevant period; or

(b) pass sentence but order the operation of the whole or any part thereof to be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) which the court may specify in the order; or

(c) discharge the person concerned with a caution or reprimand, and such discharge shall have the effect of an acquittal, except that the conviction shall be recorded as a previous conviction.

(1A) …….

(Section 297(1A) inserted by section 20(b) of Act 33 of 1986)

(Section 297(1A) deleted by section 99(1) of Act 75 of 2008)

(2) Where a court has under paragraph (a)(i) of subsection (1) postponed the passing of sentence and the court, whether differently constituted or not, is at the expiration of the relevant period satisfied that the person concerned has observed the conditions imposed under that paragraph, the court shall discharge him without passing sentence, and such discharge shall have the effect of an acquittal, except that the conviction shall be recorded as a previous conviction.

(3) Where a court has under paragraph (a)(ii) of subsection (1) unconditionally postponed the passing of sentence, and the person concerned has not at the expiration of the relevant period been called upon to appear before the court, such person shall be deemed to have been discharged with a caution under subsection (1)(c).

(4) Where a court convicts a person of an offence in respect of which any law prescribes a minimum punishment, the court may in its discretion pass sentence but order the operation of a part thereof to be suspended for a period not exceeding five years on any condition referred to in paragraph (a)(i) of subsection (1).

(5) Where a court imposes a fine, the court may suspend the payment thereof -

(a) until the expiration of a period not exceeding five years; or

(b) on condition that the fine is paid over a period not exceeding five years in instalments and at intervals determined by the court.

(6)

(a) A court which sentences a person to a term of imprisonment as an alternative to a fine or, if the court which has imposed such sentence was a regional court or a magistrate's court, a magistrate, may, where the fine is not paid, at any stage before the expiration of the period of imprisonment, suspend the operation of the sentence and order the release of the person concerned on such conditions relating to the payment of the fine or such portion thereof as may still be due, as to the court or, in the case of a sentence imposed by a regional court or magistrate's court, the magistrate, may seem expedient, including a condition that the person concerned take up a specified employment and that the fine due be paid in instalments by the person concerned or his employer: Provided that the power conferred by this subsection shall not be exercised by a magistrate where the court which has imposed the sentence has so ordered.

(b) A court which has suspended a sentence under paragraph (a), whether differently constituted or not, or any court of equal or superior jurisdiction, or a magistrate who has suspended a sentence in terms of paragraph (a), may at any time -

(i) further suspend the operation of the sentence on any existing or additional conditions which to the court or magistrate may seem expedient; or

(ii) cancel the order of suspension and recommit the person concerned to serve the balance of the sentence.

(Section 297(6) substituted by section 21 of Act 59 of 1983)

(7) A court which has -

(a) postponed the passing of sentence under paragraph (a)(i) of subsection (1);

(b) suspended the operation of a sentence under subsection (1)(b) or (4); or

(c) suspended the payment of a fine under subsection (5),

whether differently constituted or not, or any court of equal or superior jurisdiction may, if satisfied that the person concerned has through circumstances beyond his control been unable to comply with any relevant condition, or for any other good and sufficient reason, further postpone the passing of sentence or further suspend the operation of a sentence or the payment of a fine, as the case may be, subject to any existing condition or such further conditions as could have been imposed at the time of such postponement or suspension.

(8) A court which has -

(a) postponed the passing of sentence under paragraph (a)(i) of subsection (1); or

(b) suspended the operation of a sentence under subsection (1)(b) or under subsection (4),

on condition that the person concerned perform community service or that he submit himself to instruction or treatment or to the supervision or control of a probation officer or that he attend or reside at a specified centre for a specified purpose, may, whether or not the court is constituted differently than it was at the time of such postponement or suspension, at any time during the period of postponement or suspension on good cause shown amend any such condition or substitute any other competent condition for such condition, or cancel the order of postponement or suspension and impose a competent sentence or put the suspended sentence into operation, as the case may be.

(Words following upon section 297(8)(b) substituted by section 20(c) of Act 33 of 1986)

(8A)

(a) A court which under this section has imposed a condition according to which the person concerned is required to perform community service, to undergo instruction or treatment or to attend or reside at a specified centre for a specified purpose, shall cause to be served upon the person concerned a notice in writing directing him to report on a date and time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as practicable thereafter, to the person specified in that notice, whether within or outside the area of jurisdiction of the court, in order to perform that community service, to undergo that instruction or treatment or to attend that centre or to reside thereat, as the case may be.

(b) A copy of the said notice shall serve as authority to the person mentioned therein to have that community service performed by the person concerned or to provide that instruction or

treatment to the person concerned or to allow the person concerned to attend that centre or to reside thereat.

(Section 297(8A) inserted by section 20(d) of Act 33 of 1986)

(8B) Any person who-

(a) when he reports to perform community service, to undergo instruction or treatment or to attend or reside at a specified centre for a specified purpose, is under the influence of intoxicating liquor or drugs or the like; or

(b) impersonates or falsely represents himself to be the person who has been directed to perform the community service in question, to undergo the instruction or treatment in question or to attend or reside at the specified centre for the specified purpose,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months

(Section 297(8B) inserted by section 20(d) of Act 33 of 1986)

(9)

(a) If any condition imposed under this section is not complied with, the person concerned may· upon the order of any court, or if it appears from information under oath that the person concerned has failed to comply with such condition, upon the order of any magistrate, regional magistrate or judge, as the case may be, be arrested or detained and, where the condition in question -

(Words preceding section 297(9)(a)(i) substituted by section 49 of Act 129 of 1993)

(i) was imposed under paragraph (a)(i) of subsection (1), be brought before the court which postponed the passing of sentence or before any court of equal or superior jurisdiction; or

(ii) was imposed under subsection (1)(b), (4) or (5), be brought before the court which suspended the operation of the sentence or, as the case may be, the payment of the fine, or any court of equal or superior jurisdiction,

and such court, whether or not it is, in the case of a court other than a court of equal or superior jurisdiction, constituted differently than it was at the time of such postponement or suspension, may then, in the case of subparagraph (i), impose any competent sentence or, in the case of subparagraph (ii), put into operation the sentence which was suspended.

(Words following on section 297(9)(a) substituted by section 99(1) of Act 75 of 2008)

(b) A person who has been called upon under paragraph (a)(ii) of subsection (1) to appear before the court may, upon the order of the court in question, be arrested and brought before that

court, and such court, whether or not constituted differently than it was at the time of the postponement of sentence, may impose upon such person any competent sentence.

297A. Liability for patrimonial loss arising from performance of community service

(1) If patrimonial loss may be recovered from an accused on the ground of a delict committed by him in the performance of community service in terms of section 297, that loss may, subject to subsection (3), be recovered from the State.

(2) Subsection (1) shall not be construed as precluding the State from obtaining indemnification against its liability in terms of subsection (1) by means of insurance or otherwise.

(3) The patrimonial loss which may be recovered from the State in terms of subsection (1) shall be reduced by the amount from any other source to which the injured person is entitled by reason of the patrimonial loss suffered by him.

(4) In so far as the State has made a payment by virtue of a right of recovery in terms of subsection (1), all the relevant rights and legal remedies of the injured person against the accused shall pass to the State.

(5) If any person as a result of the performance of community service in terms of section 297 has suffered patrimonial loss which cannot be recovered from the State in terms of subsection (1), the Director-general: Justice may, with the concurrence of the Treasury, as an act of grace pay such amount as he may deem reasonable to that person

(Section 297A inserted by section 21 of Act 33 of 1986)

297B. Agreement on operation of suspended sentences

(1) The State President may, on such conditions as he may deem necessary, enter into an international agreement with any state, so as to provide, on a reciprocal basis, for the putting into operation of suspended sentences in respect of persons convicted, within the jurisdiction of the Republic or of such state, of an offence mentioned in the agreement.

(2) The State President may, if the parties agree, amend such an agreement to the extent which he deems necessary.

(3) If an application is made for a suspended sentence, imposed by a court of a state referred to in subsection (1), to be put into operation, the court at which the application is made shall, subject to the terms of the agreement, proceed with that application as if the suspended sentence was imposed by a court in the Republic.

(4)

(a) An agreement referred to in subsection (1), or any amendment thereof, shall only be in force after it has been published by the State President by proclamation in the *Gazette*.

(b) The State President may at any time and in like manner withdraw any such agreement.

(Section 297B inserted as 297A by section 1 of Act 8 of 1989 and renumbered to 297B by section 6 of Act 77 of 1989)

298. Sentence may be corrected

When by mistake a wrong sentence is passed, the court may, before or immediately after it is recorded, amend the sentence.

299. Warrant for the execution of sentence

A warrant for the execution of any sentence may be issued by the judge or judicial officer who passed the sentence or by any other judge or judicial officer of the court in question, or, in the case of a regional court, by any magistrate, and such warrant shall commit the person concerned to the prison for the magisterial district in which such person is sentenced.

299A. Right of complainant to make representations in certain matters with regard to placement on parole, on day parole, or under correctional supervision

(1) When a court sentences a person to imprisonment for-

(a) murder or any other offence which involves the intentional killing of a person;

(b) rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

(c) robbery where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;

(d) sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

(e) kidnapping; or

(f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs (a) to (e),

it shall inform-

(i) the complainant; or

(ii) in the case of murder or any other offence contemplated in paragraph (a), any immediate relative of the deceased,

if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the prisoner on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.

(Section 299(1) substituted by section 68 of Act 32 of 2007)

(2) If the complainant or a relative intends to exercise the right contemplated in subsection (1) by making representations to or attending a meeting of the parole board, he or she has a duty-

(i) to inform the Commissioner of Correctional Services thereof in writing;

(ii) to provide the said Commissioner with his or her postal and physical address in writing: and

(iii) to inform the said Commissioner in writing of any change of address.

(3) The Commissioner of Correctional Services shall inform the parole board in question accordingly and that parole board shall inform the complainant or relative in writing when and to whom he or she may make representations or when and where a meeting will take place.

(4)

(a) The Commissioner of Correctional Services must issue directives regarding the manner and circumstances in which a complainant or relative contemplated in subsection (1) may exercise the right contemplated in that subsection.

(b) Directives issued under paragraph (a) must be published in the Gazette.

(c) Before the directives issued under paragraph (a) are published in the Gazette, the Commissioner of Correctional Services must submit them to Parliament, and the first directives so issued, must be submitted to Parliament within three months of the commencement of this section.

(d) Any directive issued under paragraph (a) may be amended or withdrawn in like manner.

(Section 299A inserted by section 6 of Act 55 of 2003)

CHAPTER 29
COMPENSATION AND RESTITUTION

300. Court may award compensation where offence causes damage to or loss of property

(1) Where a person is convicted by a superior court, a regional court or a magistrate's court of an offence which has caused damage to or loss of property (including money) belonging to some other person, the court in question may, upon the application of the injured person or of the prosecutor acting on the instructions of the injured person, forthwith award the injured person compensation for such damage or loss: Provided that -

(a) a regional court or a magistrate's court shall not make any such award if the compensation applied for exceeds the amount determined by the Minister from time to time by notice in the *Gazette* in respect of the respective courts.

(Section 300(1)(a) substituted by section 16 of Act 56 of 1979)
(Section 300(1)(a) substituted by section 7 of Act 109 of 1984)
(Section 300(1)(a) substituted by section 14 of Act 5 of 1991)

(b) ……..

(Section 300(1)(b) deleted by section 12 of Act 26 of 1987)

(2) For the purposes of determining the amount of the compensation or the liability of the convicted person therefor, the court may refer to the evidence and the proceedings at the trial or hear further evidence either upon affidavit or orally.

(3)

(a) An award made under this section -

(i) by a magistrate's court, shall have the effect of a civil judgment of that court;

(ii) by a regional court, shall have the effect of a civil judgment of the magistrate's court of the district in which the relevant trial took place.

(b) Where a superior court makes an award under this section, the registrar of the court shall forward a certified copy of the award to the clerk of the magistrate's court designated by the presiding judge or, if no such court is designated, to the clerk of the magistrate's court in whose area of jurisdiction the offence in question was committed, and thereupon such award shall have the effect of a civil judgment of that magistrate's court.

(4) Where money of the person convicted is taken from him upon his arrest, the court may order that payment be made forthwith from such money in satisfaction or on account of the award.

(5)

(a) A person in whose favour an award has been made under this section may within sixty days after the date on which the award was made, in writing renounce the award by lodging with the registrar or clerk of the court in question a document of renunciation and, where applicable, by making a repayment of any moneys paid under subsection (4).

(b) Where the person concerned does not renounce an award under paragraph (a) within the period of sixty days, no person against whom the award was made shall be liable at the suit of the person concerned to any other civil proceedings in respect of the injury for which the award was made.

301. Compensation to innocent purchaser of property unlawfully obtained

Where a person is convicted of theft or of any other offence whereby he has unlawfully obtained any property, and it appears to the court on the evidence that such person sold such property or part thereof to another person who had no knowledge that the property was stolen or unlawfully obtained; the court may, on the application of such purchaser and on restitution of such property to the owner thereof, order that, out of any money of such convicted person taken from him on his arrest, a sum not exceeding the amount paid by the purchaser be returned to him.

CHAPTER 30
REVIEWS AND APPEALS IN CASES OF CRIMINAL PROCEEDINGS IN LOWER COURTS

302. Sentences subject to review in the ordinary course

(1)

(a) Any sentence imposed by a magistrate's court -

(i) which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in section 191(2)(j) of the Children's Act, 2005 (Act 32 of 2005)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

(Section 302(1)(a)(i) substituted by section 13(a) of Act 26 of 1987)

(Section 302(1)(a)(i) substituted by section 99(1) of Act 75 of 2008)

(ii) which, in the case of a fine, exceeds the amount determined by the Minister from time to time by notice in the *Gazette* for the respective judicial officers referred to in subparagraph;

(Section 302(1)(a)(ii) substituted by section 8 of Act 109 of 1984)

(Section 302(1)(a)(ii) substituted by section 14 of Act 5 of 1991)

(iii) …….

(Section 302(1)(a)(iii) deleted by section 2 of Act 33 of 1997)

shall be subject in the ordinary course to review by a judge of the provincial or local division having jurisdiction.

(b) The provisions of paragraph (a) shall

(i) be suspended in respect of an accused referred to in the first proviso to section 309(1)(a) who has duly noted an appeal in terms of section 309(2) against a conviction or sentence and has not abandoned the appeal;

(ii) be suspended in respect of an accused who has duly noted an appeal in terms of section 309(2) against a conviction or sentence, after being granted leave to appeal in terms of section 309B or 309C, and has not abandoned the appeal; and

(iii) cease to apply in respect of an accused when judgment in the appeal is given.

(Section 302(1)(b) substituted by section 1 of Act 42 of 2003)

(Section 302(1) amended by section 11 of Act 105 of 1982)

(2) For the purposes of subsection (1) -

(a) each sentence on a separate charge shall be regarded as a separate sentence, and the fact that the aggregate of sentences imposed on an accused in respect of more than one charge in the same proceedings exceeds the periods or amounts referred to in that subsection, shall not render those sentences subject to review in the ordinary course;

(b) …….

(Section 302(2)(b) deleted by section 22 of Act 59 of 1983)

(3) The provisions of subsection (1) shall only apply -

(a) with reference to a sentence which is imposed in respect of an accused who was not assisted by a legal adviser;

(b) ……

(Section 302(3)(b) deleted by section 13(b) of Act 26 of 1987)

303. Transmission of record

The clerk of the court in question shall within one week after the determination of a case referred to in paragraph (a) of section 302(1) forward to the registrar of the provincial or local division having jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration.

(Section 303 amended by section 12 of Act 105 of 1982)

304. Procedure on review

(1) If, upon considering the proceedings referred to in section 303 and any further information or evidence which may, by direction of the judge, be supplied or taken by the magistrate's court in question, it appears to the judge that the proceedings are in accordance with justice, he shall endorse his certificate to that effect upon the record thereof, and the registrar concerned shall then return the record to the magistrate's court in question.

(2)

(a) If, upon considering the said proceedings, it appears to the judge that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he shall obtain from the judicial officer who presided at the trial a statement setting forth his reasons for convicting the accused and for the sentence imposed, and shall thereupon lay the record of the proceedings and the said statement before the court of the provincial or local division having jurisdiction for consideration by that court as a court of appeal: Provided that where the judge concerned is of the opinion that the conviction or sentence imposed is clearly not in accordance with justice and that the person convicted may be prejudiced if the record of the proceedings is not forthwith placed before the provincial or local division having jurisdiction, the judge may lay the record of the proceedings before that court without obtaining the statement of the judicial officer who presided at the trial.

(b) Such court may at any sitting thereof hear any evidence and for that purpose summon any person to appear and to give evidence or to produce any document or other article.

(c) Such court, whether or not it has heard evidence, may, subject to the provisions of section 312 -

(i) confirm, alter or quash the conviction, and in the event of the conviction being quashed where the accused was convicted on one of two or more alternative charges, convict the accused on the other alternative charge or on one or other of the alternative charges;

(ii) confirm, reduce, alter or set aside the sentence or any order of the magistrate's court;

(iii) set aside or correct the proceedings of the magistrate's court;

(iv) generally give such judgment or impose such sentence or make such order as the magistrate's court ought to have given, imposed or made on any matter which was before it at the trial of the case in question; or

(v) remit the case to the magistrate's court with instructions to deal with any matter in such manner as the provincial division may think fit; and

(vi) make any such order in regard to the suspension of the execution of any sentence against the person convicted or the admission of such person to bail, or, generally, in regard to any matter or thing connected with such person or the proceedings in regard to such person as to the court seems likely to promote the ends of justice.

(3) If the court desires to have a question of law or of fact arising in any case argued, it may direct such question to be argued by the attorney-general and by such counsel as the court may appoint.

(4) If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.

(Section 304 amended by section 13 of Act 105 of 1982)

304A. Review of proceedings before sentence

(1)

(a) If a magistrate or regional magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he brought in a conviction are not in accordance with justice, or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit them, together with the record of the proceedings, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as practicable, lay the same for review in chambers before a judge, who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 303.

(b) When a magistrate or a regional magistrate acts in terms of paragraph (a), he shall inform the accused accordingly and postpone the case to some future date pending the outcome of the review proceedings and, if the accused is in custody, the magistrate or regional magistrate may make such order with regard to the detention or release of the accused as he may deem fit.

(Section 304A inserted by section 22 of Act 33 of 1986)

305. …….

(Section 305 amended by section 14 of Act 105 of 1982)

(Section 305 repealed by section 1 of Act 76 of 1997)

306. Accused may set down case for argument

(1) A magistrate's court imposing a sentence which under section 302 is subject to review, shall forthwith inform the person convicted that the record of the proceedings will be transmitted within one week, and such person may then inspect and make a copy of such record before transmission or whilst in the possession of the provincial or local division, and may set down the case for argument before the provincial or local division having jurisdiction in like manner as if the record had been returned or transmitted to such provincial or local division in compliance with any order made by it for the purpose of bringing in review the proceedings of a magistrate's court.

(Section 306(1) amended by section 15 of Act 105 of 1982)

(2) Whenever a case is so set down, whether the offence in question was prosecuted at the instance of the State or at the instance of a private prosecutor, a written notice shall be served, by or on behalf of the person convicted, upon the attorney-general at his office not less than seven days before the day appointed for the argument, setting forth the name and number of the case, the court before which it was tried, the date for which the case has been set down for argument and the grounds or reasons upon which the judgment is sought to be reversed or altered:

(3) Whether such judgment is confirmed or reversed or altered, no costs shall in respect of the proceedings on review be payable by the prosecution to the person convicted or by the person convicted to the prosecution.

307. Execution of sentence not suspended unless bail granted

(1) Subject to the provisions of section 308, the execution of any sentence shall not be suspended by the transmission of or the obligation to transmit the record for review unless the court which imposed the sentence releases the person convicted on bail.

(2) If the court releases such person on bail, the court may -

(a) if the person concerned was released on bail under section 59 or 60, extend the bail, either in the same amount or any other amount; or

(b) if such person was not so released on bail, release him or her on bail on condition that he or she deposits with the clerk of the court or with a member of the Department of Correctional Services at the prison where such person is in custody or with any police official at the place where such convicted person is in custody, the sum of money determined by the court in question; or

(Section 307(2)(b) substituted by section 8 of Act 64 of 1982)
(Section 307(2)(b) substituted by section 12(a) of Act 75 of 1995)
(Section 307(2)(b) amended by section 4 of Act 18 of 1996)

(c) on good cause shown, permit such person to furnish a guarantee, with or without sureties, that he will pay and forfeit to the State the sum of money determined under paragraph (b), in circumstances under which such sum, if it had been deposited, would be forfeited to the State.

(3) It shall be a condition of the release of the person convicted that he shall -

(a) at a time and place specified by the court; and

(b) upon service, in the manner prescribed by the rules of court, of a written order upon him or at a place specified by the court,

surrender himself in order that effect may be given to any sentence in respect of the proceedings in question.

(3A)

(a) If the order contemplated in subsection (3)(b) is not served on the convicted person within 14 days of the issuing thereof because he or she cannot be found at the address given by him or her at the time of the granting of bail to him or her, the bail shall be provisionally cancelled and the bail money provisionally forfeited and a warrant for his or her arrest shall be issued.

(b) The provisions of section 67(2) in respect of the confirmation or the lapsing of the provisional cancellation of bail or the forfeiture of bail money, and making final the provisional forfeiture of bail money, the provisions of section 67(3) in respect of the hearing of evidence, and the provisions of section 70 in respect of the remission of forfeited bail money, shall *mutatis mutandis* apply in respect of bail pending review.

(Section 307(3A) inserted by section 12(b) of Act 75 of 1995)

(4) The court may add any condition of release on bail which it may deem necessary or advisable in the interests of justice, *inter alia*, as to -

(a) the reporting in person by the person convicted at any specified time and place to any specified person or authority;

(b) any place to which such person is prohibited to go;

(c) any other matter relating to the conduct of such person.

(5) The court which considers an application for, bail under this section shall record the relevant proceedings in full, including the details referred to in subsection (3) and any conditions imposed under subsection (4).

(6) The provisions of sections 63, 64, 65, 66 and 68 shall *mutatis mutandis* apply with reference to bail pending review.

(Section 307(6) substituted by section 17 of Act 56 of 1979)

(Section 307(6) substituted by section 12(c) of Act 75 of 1995)

308. …….

(Section 308 amended by section 16 of Act 105 of 1982)

(Section 308 amended by section 23 of Act 33 of 1986)

(Section 308 repealed by section 2 of Act 33 of 1997)

308A. Correctional supervision not suspended unless bail granted

The execution of a sentence of correctional supervision referred to in section 276(1)(h) , shall not be suspended by the transmission of the record for review in terms of section 304(4), unless the court which imposed the sentence releases the person convicted-

(a) on bail, in which case the provisions of section 307(2), (3), (4), (5) and (6) shall *mutatis mutandis* apply;

(b) on warning on a condition as contemplated in section 307(3), in which case the provisions of section 72 shall *mutatis mutandis* apply to the extent to which they can be applied.

(Section 308A inserted by section 50 of Act 129 of 1993)

309. Appeal from lower court by person convicted

(1)

(a) Subject to section 84 of the Child Justice Act, 2008 (Act No. 75 of 2008), any person convicted of any offence by any lower court (including a person discharged after conviction) may, subject to leave to appeal being granted in terms of section 309B or 309C, appeal against such conviction and against any resultant sentence or order to the High Court having jurisdiction: Provided that if that person was sentenced to imprisonment for life by a regional court under section 51(1) of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), he or she may note such an appeal without having to apply for leave in terms of section 309B:Provided further that the provisions of section 302(1)(b) shall apply in respect of a person who duly notes an appeal against a conviction, sentence or order as contemplated in section 302(1)(a).

(Section 309(1)(a) substituted by section 2(a) of Act 76 of 1997)

(Section 309(1)(a) substituted by section 2(a) of Act 42 of 2003)

(Section 309(1)(a) substituted by section 6 of Act 38 of 2007)

(Section 309(1)(a) substituted by section 99(1) of Act 75 of 2008)

(Section 309(1)(a) substituted by section 10 of Act 42 of 2013 with effect from 1 April 2010)

(b) Where, in the case of a regional court, a conviction takes place within the area of jurisdiction of one provincial division and any resultant sentence or order is passed or, as the case may be, is made within the area of jurisdiction of another provincial division, any appeal against such conviction or such sentence or order shall be heard by the last-mentioned provincial division.

(2) An appeal under this section shall be noted and be prosecuted within the period and in the manner prescribed by the rules of court: Provided that the magistrate against whose decision or order the appeal is to be noted, or if he or she is unavailable any other magistrate of the court concerned, may on application and on good cause shown, extend such period.

(Section 309(2) substituted by section 2(b) of Act 76 of 1997)

(3) The provincial or local division concerned shall thereupon have the powers referred to in section 304(2), and, unless the appeal is based solely upon a question of law, the provincial or local division shall, in addition to such powers, have the power to increase any sentence imposed upon the appellant or to impose any other form of sentence in lieu of or in addition to such sentence: Provided that, notwithstanding that the provincial or local division is of the opinion that any point raised might be decided in favour of the appellant, no conviction or sentence shall be reversed or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to such division that a failure of justice has in fact resulted from such irregularity or defect.

(Section 309(3) amended by section 8 of Act 107 of 1990)

(Section 309(3) amended by section 38 of Act 105 of 1997)

(3A) …….

(Section 309(3A) inserted by section 2(c) of Act 76 of 1997)

(Section 309(3A) substituted by section 2(b) of Act 42 of 2003)

(Section 309(3A) deleted by section 13 of Act 66 of 2008)

(4) When an appeal under this section is noted, the provisions of -

(a) …….

(Section 309(4)(a) deleted by section 2(d) of Act 76 of 1997)

(b) sections 307 and 308A shall *mutatis mutandis* apply with reference to the sentence appealed against.

(Section 309(4)(b) substituted by section 51 of Act 129 of 1993)

(Section 309(4)(b) substituted by section 2 of Act 33 of 1997)

(5) When a provincial or local division of the Supreme Court gives a decision on appeal against a decision of the magistrates court and the former decision is appealed against, such division of the Supreme

Court has the powers in respect of the granting of bail which a magistrate's court has in terms of section 307.

(Section 309(5) added by section 13 of Act 75 of 1995)

(Section 309 amended by section 17 of Act 105 of 1982)

309A. Appeal against conviction and sentence of chiefs, headmen and chiefs' deputies

(1) In hearing any appeal to him under the provisions of section 20 of the Black Administration Act, 1927 (Act No. 38 of 1927), the magistrate shall hear and record such available evidence as may be relevant to any question in issue and shall thereupon either –

(a) confirm or vary the conviction and –

(i) confirm the sentence imposed by the chief, headman or chief's deputy and order that the said sentence be satisfied forthwith; or

(ii) set aside the sentence imposed by the chief, headman or chief's deputy and in lieu thereof impose such other sentence as in his opinion ought to have been imposed; and

(iii) impose a sentence of imprisonment for a period not exceeding three months on default of compliance forthwith with the order or sentence made or imposed under subparagraph (i) or (ii); or

(iv) set aside the sentence imposed by the chief, headman or chief's deputy and lieu thereof impose a sentence of imprisonment for a period not exceeding three months without the option of a fine; or

(b) uphold the appeal and set aside the conviction and sentence.

(2) The magistrate shall issue in respect of any person who has been sentenced to imprisonment under subsection (1), a warrant for his detention in a prison.

(Section 309A inserted by section 2 of Act 34 of 1986)

309B. Application for leave to appeal

(1)

(a) Subject to section 84 of the Child Justice Act, 2008 (Act No. 75 of 2008), any accused, other than a person referred to in the first proviso to section 309(1)(a), who wishes to note an appeal against any conviction or against any resultant sentence or order of a lower court, must apply to that court for leave to appeal against that conviction, sentence or order.

(Section 309B(1)(a) substituted by section 99(1) of Act 75 of 2008)

(Section 309B(1)(a) substituted by section 11 of Act 42 of 2013 with effect from 1 April 2010)

(b) An application referred to in paragraph (a) must be made-

(i) within 14 days after the passing of the sentence or order following on the conviction; or

(ii) within such extended period as the court may on application and for good cause shown, allow.

(2)

(a) Any application in terms of subsection (1) must be heard by the magistrate whose conviction, sentence or order is the subject of the prospective appeal (hereinafter referred to as the trial magistrate) or, if the trial magistrate is not available, by any other magistrate of the court concerned, to whom it is assigned for hearing.

(b) If the application is to be heard by a magistrate, other than the trial magistrate, the clerk of the court must submit a copy of the record of the proceedings before the trial magistrate to the magistrate hearing the application: Provided that where the accused was legally represented at a trial in a regional court the clerk of the court must, subject to paragraph (c), only submit a copy of the judgment of the trial magistrate, including the reasons for the conviction, sentence or order in respect of which the appeal is sought to be noted to the magistrate hearing the application.

(c) The magistrate referred to in the proviso to paragraph (b) may, if he or she deems it necessary in order to decide the application, request the full record of the proceedings before the trial magistrate.

(d) Notice of the date fixed for the hearing of the application must be given to the Director of Public Prosecutions concerned, or to a person designated thereto by him or her, and the accused.

(3)

(a) Every application for leave to appeal must set forth clearly and specifically the grounds upon which the accused desires to appeal.

(b) If the accused applies orally for such leave immediately after the passing of the sentence or order, he or she must state such grounds, which must be recorded and form part of the record.

(4)

(a) If an application for leave to appeal under subsection (1) is granted, the clerk of the court must, in accordance with the rules of the court, transmit copies of the record and of all relevant documents to the registrar of the High Court concerned: Provided that instead of the whole record, with the consent of the accused and the Director of Public Prosecutions, copies (one of

which must be certified) may be transmitted of such parts of the record as may be agreed upon by the Director of Public Prosecutions and the accused to be sufficient, in which event the High Court concerned may nevertheless call for the production of the whole record.

(b) If any application referred to in this section is refused, the magistrate must immediately record his or her reasons for such refusal.

(5)

(a) An application for leave to appeal may be accompanied by an application to adduce further evidence (hereafter referred to as an application for further evidence) relating to the conviction, sentence or order in respect of which the appeal is sought to be noted.

(b) An application for further evidence must be supported by an affidavit stating that-

(i) further evidence which would presumably be accepted as true, is available;

(ii) if accepted the evidence could reasonably lead to a different decision or order; and

(iii) there is a reasonably acceptable explanation for the failure to produce the evidence before the close of the trial.

(c) The court granting an application for further evidence must-

(i) receive that evidence and further evidence rendered necessary thereby, including evidence in rebuttal called by the prosecutor and evidence called by the court; and

(ii) record its findings or views with regard to that evidence, including the cogency and the sufficiency of the evidence, and the demeanour and credibility of any witness.

(6) Any evidence received under subsection (5) shall for the purposes of an appeal be deemed to be evidence taken or admitted at the trial in question.

(Section 309B inserted by section 3 of Act 76 of 1997)

(Section 309B substituted by section 3 of Act 42 of 2003)

309C. Petition procedure

(1) In this section-

(a) 'application for condonation' means an application referred to in the proviso to section 309(2), or referred to in section 309B(1)(b)(ii);

(b) 'application for leave to appeal' means an application referred to in section 309B(l)(a);

(c) 'application for further evidence' means an application to adduce further evidence referred to in section 309B(5)(a); and

(d) 'petition', unless the context otherwise indicates, includes an application referred to in subsection (2)(b)(ii).

(2)

(a) If any application-

(i) for condonation;

(ii) for further evidence; or

(iii) for leave to appeal,

is refused by a lower court, the accused may by petition apply to the Judge President of the High Court having jurisdiction to grant any one or more of the applications in question.

(b) Any petition referred to in paragraph (a) must be made-

(i) within 21 days after the application in question was refused; or

(ii) within such extended period as may on an application accompanying that petition, for good cause shown, be allowed.

(3)

(a) If more than one application referred to in subsection (1) relate to the same matter, they should, as far as is possible, be dealt with in the same petition.

(b) An accused who submits a petition in terms of subsection (2) must at the same time give notice thereof to the clerk of the lower court referred to in subsection (2)(a).

(4) When receiving the notice referred to in subsection (3), the clerk of the court must without delay submit to the registrar of the High Court concerned copies of-

(a) the application that was refused;

(b) the magistrate's reasons for refusal of the application; and

(c) the record of the proceedings in the magistrate's court in respect of which the application was refused.

(Section 309C(4) substituted by section 14 of Act 66 of 2008)

(5)

(a) A petition as provided for in this section must be considered in chambers by two judges designated by the Judge President.

(b) If the judges referred to in paragraph (a) differ in opinion, the petition must also be considered in chambers by the Judge President or by any other judge designated by the Judge President.

(c) For the purposes of paragraph (b) any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three judges.

(Section 309C(5) substituted by section 14 of Act 66 of 2008)

(6) Judges considering a petition may-

(a) call for any further information from the magistrate who refused the application in question, or from the magistrate who presided at the trial to which the application relates, as the case may be; or

(b) in exceptional circumstances, order that the petition or any part thereof be argued before them at a time and place determined by them.

(Section 309C(6) substituted by section 14 of Act 66 of 2008)

(7) Judges considering a petition may, whether they have acted under subsection (6)(a) or (b) or not-

(a) in the case of an application referred to in subsection (2)(b)(ii), grant or refuse the application; and

(b) in the case of an application for condonation, grant or refuse the application, and if the application is granted-

(i) direct that an application for leave to appeal must be made, within the period fixed by them, to the court referred to in section 309B(1);or

(ii) if they deem it expedient, direct that an application for leave to appeal must be submitted under subsection (2) within the period fixed by them as if it had been refused by the court referred to in section 309B(1); and

(c) in the case of an application for leave to appeal, subject to paragraph (d), grant or refuse the application; and

(d) in the case of an application for further evidence, grant or refuse the application, and, if the application is granted the judges may, before deciding the application for leave to appeal, remit the matter to the magistrate's court concerned in order that further evidence may be received in accordance with section 309B(5).

(8) All applications contained in a petition must be disposed of-

(a) as far as is possible, simultaneously; and

(b) as a matter of urgency, where the accused was sentenced to any form of imprisonment that was not wholly suspended.

(9) Notice of the date fixed for any hearing of a petition under this section, and of any place determined under subsection (6) for any hearing, must be given to the Director of Public Prosecutions concerned, or to a person designated by him or her, and the accused.

(Section 309C inserted by section 3 of Act 76 of 1997)

(Section 309C substituted by section 3 of Act 42 of 2003)

309D. Explanation of certain rights to unrepresented and certain other accused

(1)

(a) Other than a child contemplated in the Child Justice Act, 2008 (Act No. 75 of 2008), an accused-

(i) referred to in the first proviso to section 309(1)(a);or

(ii) who is unrepresented at the time he or she is convicted and sentenced,

must be informed by the presiding officer of his or her rights in respect of appeal and legal representation and of the correct procedures to give effect to these rights.

(Section 309D(1)(a) substituted by section 99(1) of Act 75 of 2008)

(Section 309D(1)(a) substituted by section 12 of Act 42 of 2013)

(b) An accused whose sentence is subject to review in the ordinary course in terms of section 302(1)(a), must be informed by the presiding officer that the provisions pertaining to such review-

(i) shall be suspended if he or she appeals against that conviction or sentence; and

(ii) shall cease to apply once judgment in the appeal has been given.

(2) An accused contemplated in subsection (1)(a) in respect of whom an application in terms of the proviso to section 309(2) or 309B is refused, must be informed by the presiding officer of his or her rights in respect of the proceedings contemplated in section 309C and legal representation and of the correct procedures involved to give effect to these rights.

(3) If an unrepresented accused has been convicted and sentenced-

(a) to any form of imprisonment that was not wholly suspended; or

(b) to any form of punishment which in view of the presiding officer may lead to substantial injustice for the accused,

and he or she indicates to the presiding officer his or her intention to apply for leave to appeal in terms of section 309B(1)(a) or for leave to petition in terms of section 309C(2)(a), the presiding officer must refer the accused to the Legal Aid Board referred to in section 2 of the Legal Aid Act, 1969 (Act No. 22 of 1969), for the purpose of allowing him or her an opportunity to request legal representation to assist such accused in his or her application.

(Section 309D inserted by section 3 of Act 76 of 1997)

(Section 309D substituted by section 3 of Act 42 of 2003)

310. Appeal from lower court by prosecutor

(1) When a lower court has in criminal proceedings given a decision in favour of the accused on any question of law, including an order made under section 85(2), the attorney-general or, if a body or a person other than the attorney-general or his representative, was the prosecutor in the proceedings, then such other prosecutor may require the judicial officer concerned to state a case for the consideration of the provincial or local division having jurisdiction, setting forth the question of law and his decision thereon and, if evidence has been heard, his findings of fact, in so far as they are material to the question of law.

(2) When such case has been stated, the attorney-general or other prosecutor, as the case may be, may appeal from the decision to the provincial or local division having jurisdiction.

(3) The provisions of section 309(2) shall apply with reference to an appeal under this section.

(4) If the appeal is allowed, the court which gave the decision appealed from shall, subject to the provisions of subsection (5) and after giving sufficient notice to both parties, reopen the case in which the decision was given and deal with it in the same manner as it should have dealt therewith if it had given a decision in accordance with the law as laid down by the provincial or local division in question.

(5) In allowing the appeal, whether wholly or in part, the provincial or local division may itself impose such sentence or make such order as the lower court ought to have imposed or made, or it may remit the

case to the lower court and direct that court to take such further steps as the provincial or local division considers proper.

(Section 310 amended by section 18 of Act 105 of 1982)

310A. Appeal by attorney-general against sentence of lower court

(1) The attorney-general may appeal against a sentence imposed upon an accused in a criminal case in a lower court, to the provincial or local division having jurisdiction, provided that an application for leave to appeal has been granted by a judge in chambers.

(2)

(a) A written notice of such an application shall be lodged with the registrar of the provincial or local division concerned by the attorney-general, within a period of 30 days of the passing of sentence or within such extended period as may on application on good cause be allowed.

(b) The notice shall state briefly the grounds for the application.

(3) The attorney-general shall, at least 14 days before the day appointed for the hearing of the application, cause to be served by the deputy sheriff upon the accused in person a copy of the notice, together with a written statement of the rights of the accused in terms of subsection (4): Provided that if the deputy sheriff is not able so to serve a copy of the notice, it may be served in any other manner that may on application be allowed.

(4) An accused may, within a period of 10 days of the serving of such a notice upon him, lodge a written submission with the registrar concerned, and the registrar shall submit it to the judge who is to hear the application, and shall send a copy thereof to the attorney-general.

(5) Subject to the provisions of this section, section 309 shall apply *mutatis mutandis* with reference to an appeal in terms of this section.

(6) Upon an application for leave to appeal referred to in subsection (1) or an appeal in terms of this section, the judge or the court, as the case may be, may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the application or appeal, taxed according to the scale in civil cases of the provincial or local division concerned.

(Section 310A inserted by section 9 of Act 107 of 1990)

311. Appeal to Appellate Division

(1) Where the provincial or local division on appeal, whether brought by the attorney-general or other prosecutor or the person convicted, gives a decision in favour of the person convicted on a question of law, the attorney-general or other prosecutor against whom the decision is given may appeal to the

Appellate Division of the Supreme Court, which shall, if it decides the matter in issue in favour of the appellant, set aside or vary the decision appealed from and, if the matter was brought before the provincial or local division in terms of -

(a) section 309(1), re-instate the conviction, sentence or order of the lower court appealed from, either in its original form or in such a modified form as the said Appellate Division may consider desirable; or

(b) section 310(2), give such decision or take such action as the provincial or local division ought, in the opinion of the said Appellate Division, to have given or taken (including any action under section 310(5), and thereupon the provisions of section 310(4) shall *mutatis mutandis* apply.

(Section 311(1) amended by section 19 of Act 105 of 1982)

(2) If an appeal brought by the attorney-general or other prosecutor under this section or section 310 is dismissed, the court dismissing the appeal may order that the appellant pay the respondent the costs to which the respondent may have been put in opposing the appeal, taxed according to the scale in civil cases of that court: Provided that where the attorney-general is the appellant, the costs which he is so ordered to pay shall be paid by the State.

312. Review or appeal and failure to comply with subsection (1)(b) or (2) of section 112

(1) Where a conviction and sentence under section 112 are set aside on review or appeal on the ground that any provision of subsection (1)(b) or subsection (2) of that section was not complied with, or on the ground that the provisions of section 113 should have been applied, the court in question shall remit the case to the court by which the sentence was imposed and direct that court to comply with the provision in question or to act in terms of section 113, as the case may be.

(Section 312(1) substituted by section 23 of Act 59 of 1983)

(2) When the provision referred to in subsection (1) is complied with and the judicial officer is after such compliance not satisfied as is required by section 112(1)(b) or 112(2), he shall enter a plea of not guilty whereupon the provisions of section 113 shall apply with reference to the matter.

313. Institution of proceedings *de novo* when conviction set aside on appeal or review

The provisions of section 324 shall *mutatis mutandis* apply with reference to any conviction and sentence of a lower court that are set aside on appeal or review on any ground referred to in that section.

314. Obtaining presence of convicted person in lower court after setting aside of sentence or order

(1) Where a sentence or order imposed or made by a lower court is set aside on appeal or review and the person convicted is not in custody and the court setting aside the sentence or order remits the matter

to the lower court in order that a fresh sentence or order may be imposed or made, the presence before that court of the person convicted may be obtained by means of a written notice addressed to that person calling upon him to appear at a stated place and time on a stated date in order that such sentence or order may be imposed or made.

(2) The provisions of section 54(2) and 55(1) and (2) shall *mutatis mutandis* apply with reference to a written notice issued under subsection (1).

CHAPTER 31
APPEALS IN CASES OF CRIMINAL PROCEEDINGS IN SUPERIOR COURTS

315. Court of appeal in respect of superior court judgments

(1)

(a) In respect of appeals and questions of law reserved in connection with criminal cases heard by a High Court, the court of appeal shall be the Supreme Court of Appeal, except in so far as subsections (2) and (3) otherwise provides.

(b) …….

(Section 315(1)(b) deleted by section 15 of Act 66 of 2008)

(c) …….

(Section 315(1)(c) deleted by section 15 of Act 66 of 2008)

(Section 315(1) substituted by section 11 of Act 62 of 2000)
(Section 315(1) substituted by section 4(a) of Act 42 of 2003)

(2)

(a) If an application for leave to appeal in a criminal case heard by a single judge of a High Court (irrespective of whether he or she sat with or without assessors) is granted under section 316, the court or judge or judges granting the application shall, if it, he or she or, in the case of the judges referred to in subsections (12) and (13) of that section, they or the majority of them, is or are satisfied that the questions of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the Supreme Court of Appeal, direct that the appeal be heard by a full court.

(b) Any such direction by the court or a judge of a High Court may be set aside by the Supreme Court of Appeal on application made to it by the accused or the Director of Public Prosecutions or other prosecutor within 21 days, or such longer period as may on application to the Supreme Court of Appeal on good cause shown, be allowed, after the direction was given.

(c) Any application to the Supreme Court of Appeal under paragraph (b) shall be submitted by petition addressed to the President of the Supreme Court of Appeal, and the provisions of section 316(8), (9), (10), (11), (12), (13), (14) and (15) shall apply *mutatis mutandis* in respect thereof.

(Section 315(2) amended by section 39(a) of Act 105 of 1997)

(Section 315(2) substituted by section 4(b) of Act 42 of 2003)

(3) An appeal which is to be hard by a full court in terms of a direction under paragraph (a) of subsection (2) which has not been set aside under paragraph (b) of that subsection, shall be heard –

(a) in the case of an appeal in a criminal case heard by a single judge of a provincial division, by the full court of the provincial division concerned;

(b) in the case of an appeal in a criminal case heard by a single judge of a local division other than the Witwatersrand Local Division, by the full court of the provincial division which exercises concurrent jurisdiction in the area of jurisdiction of the local division concerned;

(c) in the case of an appeal in a criminal case heard by a single judge of the Witwatersrand Local Division-

(i) by the full court of the Transvaal Provincial Division, unless a direction by the judge president of that provincial division under subparagraph (ii) applies to it; or

(ii) by the full court of the said local division if the said judge president has so directed in the particular instance.

(4) An appeal in terms of this Chapter shall lie only as provided in sections 316 to 319 inclusive, and not as of right.

(Section 315(4) substituted by section 10 of Act 107 of 1990)

(Section 315(4) substituted by section 39(b) of Act 105 of 1997)

(5) In this Chapter-

(a) 'court of appeal' means, in relation to an appeal which in terms of subsection (3) is heard or is to be heard by a full court, the full court concerned and, in relation to any other appeal, the Supreme Court of Appeal;

(Section 315(5)(a) substituted by section 4(c) of Act 42 of 2003)

(b) 'full court' means the court of a provincial division, or the Witwatersrand Local Division, sitting as a court of appeal and constituted before three judges.

(Section 315 substituted by section 20 of Act 105 of 1982)

316. Applications for condonation, leave to appeal and further evidence

(1)

(a) Subject to section 84 of the Child Justice Act, 2008, any accused convicted of any offence by a High Court may apply to that court for leave to appeal against such conviction or against any resultant sentence or order.

(Section 316(1)(a) substituted by section 99(1) of Act 75 of 2008)

(b) An application referred to in paragraph (a) must be made-

(i) within 14 days after the passing of the sentence or order following on the conviction; or

(ii) within such extended period as the court may on application and for good cause shown, allow.

(c) …….

(Section 316(1)(c) deleted by section 99(1) of Act 75 of 2008)

(2)

(a) An application referred to in subsection (1) must be made to the judge whose conviction, sentence or order is the subject of the prospective appeal (hereafter in this section referred to as the trial judge): Provided that if-

(i) the trial judge is not available; or

(ii) in the case of a conviction before a circuit court the said court is not in sitting,

the application may be made to any other judge of the High Court concerned.

(b) If the application is to be heard by a judge, other than the trial judge, the registrar of the court must submit a copy of the judgment of the trial judge, including the reasons for the conviction, sentence or order in respect of which the appeal is sought to be noted to the judge hearing the application.

(c) The judge referred to in paragraph (b) may, if he or she deems it necessary in order to decide the application, request the full record of the proceedings before the trial judge.

(3)

(a) No appeal shall lie against the judgment or order of a full court given on appeal to it in terms of section 315(3), except with the special leave of the Supreme Court of Appeal on application made to it by the accused or, where a full court has for the purposes of such judgment or order

given a decision in favour of the accused on a question of law, on application on the grounds of such decision made to that court by the Director of Public Prosecutions or other prosecutor against whom the decision was given.

(b) An application to the Supreme Court of Appeal under paragraph (a) shall be submitted by petition addressed to the President of the Supreme Court of Appeal-

(i) within 21 days after the judgment or order against which appeal is to be made was given; or

(ii) within such extended period as may on application and for good cause shown, be allowed.

(c) The accused or Director of Public Prosecutions or other prosecutor shall, when submitting in accordance with paragraph (b) the application for special leave to appeal, at the same time give written notice that this has been done to the registrar of the court against whose decision he or she wishes to appeal, and thereupon such registrar shall forward a certified copy of the record prepared in terms of subsection (7) for the purposes of such judgment or order, and of the reasons for such judgment or order, to the registrar of the Supreme Court of Appeal.

(d) The provisions of subsections (4), (10), (11), (12), (13), (14) and (15) shall apply *mutatis mutandis* with reference to any application and petition contemplated in paragraph (b) of this subsection.

(e) Upon an appeal under this subsection the provisions of section 322 shall apply *mutatis mutandis* with reference to the powers of the Supreme Court of Appeal.

(4)

(a) Every application for leave to appeal must set forth clearly and specifically the grounds upon which the accused desires to appeal.

(b) If the accused applies orally for such leave immediately after the passing of the sentence or order, he or she must state such grounds, which must be recorded and form part of the record.

(5)

(a) An application for leave to appeal under subsection (1) may be accompanied by an application to adduce further evidence (hereafter in this section referred to as an application for further evidence) relating to the prospective appeal.

(b) An application for further evidence must be supported by an affidavit stating that-

(i) further evidence which would presumably be accepted as true, is available;

(ii) if accepted the evidence could reasonably lead to a different verdict or sentence; and

(iii) there is a reasonably acceptable explanation for the failure to produce the evidence before the close of the trial.

(c) The court granting an application for further evidence must-

(i) receive that evidence and further evidence rendered necessary thereby, including evidence in rebuttal called by the prosecutor and evidence called by the court; and

(ii) record its findings or views with regard to that evidence, including the cogency and the sufficiency of the evidence, and the demeanour and credibility of any witness.

(6) Any evidence received under subsection (5) shall for the purposes of an appeal be deemed to be evidence taken or admitted at the trial in question.

(7)

(a) If an application under subsection (1) for leave to appeal is granted and the appeal is not under section 315(3) to be heard by the full court of the High Court from which the appeal is made, the registrar of the court granting such application shall cause notice to be given accordingly to the registrar of the Supreme Court of Appeal without delay, and shall cause to be transmitted to the said registrar a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the Director of Public Prosecutions, copies (one of which must be certified) may be transmitted of such parts of the record as may be agreed upon by the Director of Public Prosecutions and the accused to be sufficient, in which event the judges of the Supreme Court of Appeal may nevertheless call for the production of the whole record.

(b) If an application under subsection (1) for leave to appeal is granted and the appeal is under section 315(3) to be heard by the full court of the High Court from which the appeal is made, the registrar shall without delay prepare a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the Director of Public Prosecutions, copies (one of which must be certified) may be prepared of such parts of the record as may be agreed upon by the Director of Public Prosecutions and the accused to be sufficient, in which event the judges of the full court of the High Court concerned may nevertheless call for the production of the whole record.

(8)

(a) If any application-

(i) referred to in subsection (1)(b)(ii) (hereafter in this section referred to as an application for condonation);

(ii) referred to in subsection (1)(b)(i) (hereafter in this section referred to as an application for leave to appeal); or

(iii) referred to in subsection (5)(a) to adduce further evidence (hereafter in this section referred to as an application for further evidence),

is refused by a High Court, the accused may by petition apply to the President of the Supreme Court of Appeal to grant any one or more of the applications in question.

(b) Any petition referred to in paragraph (a) must be made-

(i) within 21 days after the application in question was refused; or

(ii) within such extended period as may on an application accompanying that petition, for good cause shown, be allowed.

(9)

(a) If more than one application referred to in subsection (8)(a) relate to the same matter, they should, as far as is possible, be dealt with in the same petition.

(b) An accused who submits a petition referred to in subsection (8)(a), must at the same time give written notice thereof to the registrar of the High Court (other than a circuit court) within whose area of jurisdiction the trial took place, and of which the judge who presided at the trial was a member when he or she so presided.

(10) When receiving notice of a petition as provided for in subsection (9), the registrar shall forward to the registrar of the Supreme Court of Appeal copies of the-

(a) application or applications that were refused;

(b) the reasons for refusing the application or applications; and

(c) the record of the proceedings in the High Court in respect of which the application was refused, if-

(i) the accused was not legally represented at the trial; or

(ii) the accused is not legally represented for the purposes of the petition; or

(iii) the prospective appeal is not against sentence only; or

(iv) the judges considering the petition, in the interest of justice, request the record or only a portion of the record.

(Section 316(10)(c) substituted by section 1(a) of Act 8 of 2013 with effect from 10 September 2010)

(Section 316(10) substituted by section 16(a) of Act 66 of 2008)

(11)

(a) A petition referred to in subsection (8), including an application referred to in subsection (8)(b)(ii), must be considered in chambers by two judges of the Supreme Court of Appeal designated by the President of the Supreme Court of Appeal.

(b) If the judges differ in opinion, the petition shall also be considered in chambers by the President of the Supreme Court of Appeal or by any other judge of the Supreme Court of Appeal to whom it has been referred by the President.

(c) For the purposes of paragraph (b) any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three judges.

(12) The judges considering a petition may-

(a) call for any further information from the judge who refused the application in question, or from the judge who presided at the trial to which the application relates, as the case may be;

(Section 316(12)(a) amended by section 1(b) of Act 8 of 2013 with effect from 10 September 2010)

(b) in exceptional circumstances, order that the application or applications in question or any of them be argued before them at a time and place determined by them; or

(Section 316(12)(b) amended by section 1(b) of Act 8 of 2013 with effect from 10 September 2010)

(c) call for a copy of the record or portion of the record of the proceedings if it was not submitted in terms of subsection (10)(c).

(Section 316(12)(c) added by section 1(b) of Act 8 of 2013 with effect from 10 September 2010)

(Section 316(12) substituted by section 16(b) of Act 66 of 2008)

(13) The judges considering a petition may, whether they have acted under subsection (12)(a) or (b) or not-

(a) in the case of an application referred to in subsection (8)(b)(ii), grant or refuse the application; and

(b) in the case of an application for condonation grant or refuse the application, and if the application is granted-

(i) direct that an application for leave to appeal must be made, within the period fixed by them, to the High Court referred to in subsection (8)(a); or

(ii) if they deem it expedient, direct that an application for leave to appeal must be submitted under subsection (8) within the period fixed by them as if it had been refused by the High Court referred to in subsection (8)(a); and

(c) in the case of an application for leave to appeal, subject to paragraph (d), grant or refuse the application; and

(d) in the case of an application for further evidence, grant or refuse the application, and, if the application is granted the judges may, before deciding the application for leave to appeal, remit the matter to the High Court concerned in order that further evidence may be received in accordance with subsection (5)(c); or

(e) in exceptional circumstances refer the petition to the Supreme Court of Appeal for consideration, whether upon argument or otherwise, and the Supreme Court of Appeal may thereupon deal with the petition in any manner referred to in this subsection.

(14) All applications contained in a petition must be disposed of-

(a) as far as is possible, simultaneously; and

(b) as a matter of urgency, where the accused was sentenced to any form of imprisonment that was not wholly suspended.

(15) Notice of the date fixed for the hearing of any application under this section, and of any time and place determined under subsection (12) for any hearing, must be given to the Director of Public Prosecutions concerned and the accused.

(Section 316 amended by section 21 of Act 105 of 1982)
(Section 316 amended by section 15 of Act 26 of 1987)
(Section 316 amended by section 12 of Act 62 of 2000)
(Section 316 substituted by section 5 of Act 42 of 2003)

316A. …….

(Section 316A inserted by section 11 of Act 107 of 1990)
(Section 316A repealed by section 40 of Act 105 of 1997)

316B. Appeal by attorney-general against sentence of superior court

(1) Subject to subsection (2), the attorney-general may appeal to the Appellate Division against a sentence imposed upon an accused in a criminal case in a superior court.

(2) The provisions of section 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of subsection (1) of this section.

(3) Upon an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the attorney-general, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.

(Section 316B inserted by section 11 of Act 107 of 1990)

317. Special entry of irregularity or illegality

(1) If an accused is of the view that any of the proceedings in connection with or during his or her trial before a High Court are irregular or not according to law, he or she may, either during his or her trial or within a period of 14 days after his or her conviction or within such extended period as may upon application (in this section referred to as an application for condonation) on good cause be allowed, apply for a special entry to be made on the record (in this section referred to as an application for a special entry) stating in what respect the proceedings are alleged to be irregular or not according to law, and such a special entry shall, upon such application for a special entry, be made unless the court to which or the judge to whom the application for a special entry is made is of the opinion that the application is not made bona fide or that it is frivolous or absurd or that the granting of the application would be an abuse of the process of the court.

(Section 317(1) substituted by section 6(a) of Act 42 of 2003)

(2) Save as hereinafter provided, an application for condonation or for a special entry shall be made to the judge who presided at the trial or, if he is not available, or, if in the case of a conviction before a circuit court the said court is not sitting, to any other judge of the provincial or local division of which that judge was a member when he so presided.

(3) …….

(Section 317(3) deleted by section 13 of Act 62 of 2000)

(4) The terms of a special entry shall be settled by the court which or the judge who grants the application for a special entry.

(5) If an application for condonation or for a special entry is refused, the accused may, within a period of 21 days of such refusal or within such extended period as may on good cause shown, be allowed, by petition addressed to the President of the Supreme Court of Appeal, apply to the Supreme Court of

Appeal for condonation or for a special entry to be made on the record stating in what respect the proceedings are alleged to be irregular or not according to law, as the case may be, and thereupon the provisions of subsections (11), (12), (13), (14) and (15) of section 316 shall *mutatis mutandis* apply.

(Section 317(5) amended by section 22 of Act 105 of 1982)

(Section 317(5) substituted by section 6(b) of Act 42 of 2003)

318. Appeal on special entry under section 317

(1) If a special entry is made on the record, the person convicted may appeal to the Appellate Division against his conviction on the ground of the irregularity or illegality stated in the special entry if, within a period of twenty-one days after entry is so made or within such extended period as may on good cause be allowed, notice of appeal has been given to the registrar of the Appellate Division and to the registrar of the provincial or local division, other than a circuit court, within whose area of jurisdiction the trial took place, and of which the judge who presided at the trial was a member when he so presided.

(2) The registrar of such provincial or local division shall forthwith after receiving such notice give notice thereof to the attorney-general and shall transmit to the registrar of the Appellate Division a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial and of the special entry: Provided that with the consent of the accused and the attorney-general, the registrar concerned may, instead of transmitting the whole record, transmit copies, one of which shall be certified, of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the Appellate Division may nevertheless call for the production of the whole record.

(Section 318 amended by section 23 of Act 105 of 1982)

319. Reservation of question of law

(1) If any question of law arises on the trial in a superior court of any person for any offence, that court may of its own motion or at the request either of the prosecutor or the accused reserve that question for the consideration of the Appellate Division, and thereupon the first-mentioned court shall state the question reserved and shall direct that it be specially entered in the record and that a copy thereof be transmitted to the registrar of the Appellate Division.

(Section 319(1) amended by section 24 of Act 105 of 1982)

(2) The grounds upon which any objection to an indictment is taken shall, for the purposes of this section, be deemed to be questions of law.

(3) The provisions of sections 317(2), (4) and (5) and 318(2) shall apply *mutatis mutandis* with reference to all proceedings under this section.

(Section 319(3) substituted by section 14 of Act 62 of 2000)

320. Report of trial judge to be furnished on appeal

The judge or judges, as the case may be, of any court before whom a person is convicted shall, in the case of an appeal under section 316 or 316B or of an application for a special entry under section 317 or the reservation of a question of law under section 319 or an application to the court of appeal for leave to appeal or for a special entry under this Act, furnish to the registrar a report giving his, her or their opinion upon the case or upon any point arising in the case, and such report, which shall form part of the record, shall without delay be forwarded by the registrar to the registrar of the court of appeal.

(Section 320 substituted by section 12 of Act 107 of 1990)
(Section 320 substituted by section 41 of Act 105 of 1997)

321. When execution of sentence may be suspended

(1) The execution of the sentence of a superior court shall not be suspended by reason of any appeal against a conviction or by reason of any question of law having been reserved for consideration by the court of appeal, unless -

(a) the accused is sentenced to death or to a whipping in which case the sentence shall not be executed until the appeal or question reserved has been heard and decided; or
(Section 321(1)(a) deleted by section 2 of Act 33 of 1997)

(b) the superior court from which the appeal is made or by which the question is reserved thinks fit to order that the accused be released on bail or that he be treated as an unconvicted prisoner until the appeal or the question reserved has been heard and decided:

Provided that when the accused is ultimately sentenced to imprisonment the time during which he was so released on bail shall be excluded in computing the term for which he is so sentenced: Provided further that when the accused has been detained as an unconvicted prisoner, the time during which he has been so detained shall be included or excluded in computing the term for which he is ultimately sentenced, as the court of appeal may determine.

(2) If the court orders that the accused be released on bail, the provisions of sections 66, 67 and 68 and of subsections (2), (3), (4) and (5) of section 307 shall *mutatis mutandis* apply with reference to bail so granted, and any reference in -

(a) section 66 to the court which may act under that section, shall be deemed to be a reference to the superior court by which the accused was released on bail;

(b) section 67 to the court which may act under that section, shall be deemed to be a reference to the magistrate's court within whose area of jurisdiction the accused is to surrender himself in order that effect be given to any sentence in respect of the proceedings in question; and

(c) section 68 to a magistrate shall be deemed to be a reference to a judge of the superior court in question.

322. Powers of court of appeal

(1) In the case of an appeal against a conviction or of any question of law reserved, the court of appeal may -

(a) allow the appeal if it thinks that the judgment of the trial court should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a failure of justice; or

(b) give such judgment as ought to have been given at the trial or impose such punishment as ought to have been imposed at the trial; or

(c) make such other order as justice may require:

Provided that, notwithstanding that the court of appeal is of opinion that any point raised might be decided in favour of the accused, no conviction or sentence shall be set aside or altered by reason of any irregularity or defect in the record or proceedings, unless it appears to the court of appeal that a failure of justice has in fact resulted from such irregularity or defect.

(2) Upon an appeal under section 316 or 316B against any sentence, the court of appeal may confirm the sentence or may delete or amend the sentence and impose such punishment as ought to have been imposed at the trial.

(Section 322(2) substituted by section 13(a) of Act 107 of 1990)

(2A) ……..

(Section 322(2A) inserted by section 13(b) of Act 107 of 1990)
(Section 322(2A) deleted by section 42(a) of Act 105 of 1997)

(3) Where a conviction and sentence are set aside by the court of appeal on the ground that a failure of justice has in fact resulted from the admission against the accused of evidence otherwise admissible but not properly placed before the trial court by reason of some defect in the proceedings, the court of appeal may remit the case to the trial court with instructions to deal with any matter, including the hearing of such evidence, in such manner as the court of appeal may think fit.

(4) Where a question of law has been reserved on the application of a prosecutor in the case of an acquittal, and the court of appeal has given a decision in favour of the prosecutor, the court of appeal may order that such of the steps referred to in section 324 be taken as the court may direct.

(5) The order or direction of the court of appeal shall be transmitted by the registrar of that court to the registrar of the court before which the case was tried, and such order or direction shall be carried into effect and shall authorize every person affected by it to do whatever is necessary to carry it into effect.

(6) The powers conferred by this section upon the court of appeal in relation to the imposition of punishments, shall include the power to impose a punishment more severe than that imposed by the court below or to impose another punishment in lieu of or in addition to such punishment.

(Section 322(6) substituted by section 13(c) of Act 107 of 1990)

(Section 322(6) substituted by section 42(b) of Act 105 of 1997)

323. …….

(Section 323 amended by section 25 of Act 105 of 1982)

(Section 323 substituted by section 14 of Act 107 of 1990)

(Section 323 repealed by section 43 of Act 105 of 1997)

324. Institution of proceedings de novo when conviction set aside on appeal

Whenever a conviction and sentence are set aside by the court of appeal on the ground -

(a) that the court which convicted the accused was not competent to do so; or

(b) that the indictment on which the accused was convicted was invalid or defective in any respect; or

(c) that there has been any other technical irregularity or defect in the procedure,

proceedings in respect of the same offence to which the conviction and sentence referred may again be instituted either on the original charge, suitably amended where necessary, or upon any other charge as if the accused had not previously been arraigned, tried and convicted: Provided that no judge or assessor before whom the original trial took place shall take part in such proceedings.

325. Saving of power of State President to extend mercy

Nothing in this Act shall affect the power of the State President to extend mercy to any person.

325A. …….

(Section 325A inserted by section 15 of Act 107 of 1990)

(Section 325A repealed by section 44 of Act 105 of 1997)

326. …….

(Section 326 repealed by section 44 of Act 105 of 1997)

327. Further evidence and free pardon or substitution of verdict by State President

(1) If any person convicted of any offence in any court has in respect of the conviction exhausted all the recognized legal procedures pertaining to appeal or review, or if such procedures are no longer available to him or her, and such person or his or her legal representative addresses the Minister by way of petition, supported by relevant affidavits, stating that further evidence has since become available which materially affects his or her conviction, the Minister may, if he or she considers that such further evidence, if true, might reasonably affect the conviction, direct that the petition and the relevant affidavits be referred to the court in which the conviction occurred.

(Section 327(1) substituted by section 16(a) of Act 107 of 1990)

(Section 327(1) substituted by section 45(a) of Act 105 of 1997)

(2) The court shall receive the said affidavits as evidence and may examine and permit the examination of any witness in connection therewith, including any witness on behalf of the State, and to this end the provisions of this Act relating to witnesses shall apply as if the matter before the court were a criminal trial in that court.

(3) Unless the court directs otherwise, the presence of the convicted person shall not be essential at the hearing of further evidence.

(Section 327(3) substituted by section 45(b) of Act 105 of 1997)

(4)

(a) The court shall assess the value of the further evidence and advise the President whether, and to what extent, such evidence affects the conviction in question.

(b) The court shall not, as part of the proceedings of the court, announce its finding as to the further evidence or the effect thereof on the conviction in question.

(Section 327(4) substituted by section 45(b) of Act 105 of 1997)

(5) The court shall be constituted as it was when the conviction occurred or, if it cannot be so constituted, the judge-president or, as the case may be, the senior regional magistrate or magistrate of the court in question, shall direct how the court shall be constituted.

(6)

(a) The State President may, upon consideration of the finding or advice of the court under subsection (4) -

(i) direct that the conviction in question be expunged from all official records by way of endorsement on such records, and the effect of such a direction and endorsement shall be that the person concerned be given a free pardon as if the conviction in question had never occurred; or

(ii) substitute for the conviction in question a conviction of lesser gravity and substitute for the punishment imposed for such conviction any other punishment provided by law; or

(iii) …….

(Section 327(6)(a)(iii) deleted by section 45(c) of Act 105 of 1997)

(b) The State President shall direct the Minister to advise the person concerned in writing of any decision taken under paragraph (a), other than a decision taken under subparagraph (iii) of that paragraph, and to publish a notice in the *Gazette* in which such decision, other than a decision taken under the said subparagraph (iii), is set out.

(7) No appeal, review or other proceedings of whatever nature shall lie in respect of -

(a) a refusal by the Minister to issue a direction under subsection (1) or by the State President to act upon the finding or advice of the court under subsection (4)(a); or

(Section 327(7)(a) substituted by section 16(b) of Act 107 of 1990)

(b) any aspect of the proceedings, finding or advice of the court under this section.

CHAPTER 33
GENERAL PROVISIONS

328. Force of process

Any warrant, subpoena, summons or other process relating to any criminal matter shall be of force throughout the Republic and may be executed anywhere within the Republic.

329. Court process may be served or executed by police official

Any police official shall, subject to the rules of court, be as qualified to serve or execute any subpoena or summons or other document under this Act as if he had been appointed deputy sheriff or deputy messenger or other like officer of the court.

330. Transmission of court process by telegraph or similar communication

Any document, order or other court process which under this Act or the rules of court is required to be served or executed with reference to any person, may be transmitted by telegraph or similar written or

printed communication, and a copy of such telegraph or communication, served or executed in the same manner as the relevant document, order or other court process is required to be served or executed, shall be of the same force and effect as if the document, order or other court process in question had itself been served or executed.

331. Irregular warrant or process

Any person who acts under a warrant or process which is bad in law on account of a defect in the substance or form thereof shall, if he has no knowledge that such warrant or process is bad in law and whether or not such defect is apparent on the face of the warrant or process, be exempt from liability in respect of such act as if the warrant or process were good in law.

332. Prosecution of corporations and members of associations

(1) For the purpose of imposing upon a corporate body criminal liability for any offence, whether under any law or at common law -

(a) any act performed, with or without a particular intent, by or on instructions or with permission, express or implied, given by a director or servant of that corporate body; and

(b) the omission, with or without a particular intent, of any act which ought to have been but was not performed by or on instructions given by a director or servant of that corporate body,

in the exercise of his powers or in the performance of his duties as such director or servant or in furthering or endeavouring to further the interests of that corporate body, shall be deemed to have been performed (and with the same intent, if any) by that corporate body or, as the case may be, to have been an omission (and with the same intent, if any) on the part of that corporate body.

(2) In any prosecution against a corporate body, a director or servant of that corporate body shall be cited, as representative of that corporate body, as the offender, and thereupon the person so cited may, as such representative, be dealt with as if he were the person accused of having committed the offence in question: Provided that -

(a) if the said person pleads guilty, other than by way of admitting guilt under section 57, the plea shall not be valid unless the corporate body authorized him to plead guilty;

(b) if at any stage of the proceedings the said person ceases to be a director or servant of that corporate body or absconds or is unable to attend, the court in question may, at the request of the prosecutor, from time to time substitute for the said person any other person who is a director or servant of the said corporate body at the time of the said substitution, and thereupon the proceedings shall continue as if no substitution had taken place;

(c) if the said person, as representing the corporate body, is convicted, the court convicting him shall not impose upon him in his representative capacity any punishment, whether direct or as an alternative, other than a fine, even if the relevant law makes no provision for the imposition of a fine in respect of the offence in question, and such fine shall be payable by the corporate body and may be recovered by attachment and sale of property of the corporate body in terms of section 288;

(d) the citation of a director or servant of a corporate body as aforesaid, to represent that corporate body in any prosecution instituted against it, shall not exempt that director or servant from prosecution for that offence in terms of subsection (5).

(3) In criminal proceedings against a corporate body, any record which was made or kept by a director, servant or agent of the corporate body within the scope of his activities as such director, servant or agent, or any document which was at any time in the custody or under the control of any such director, servant or agent within the scope of his activities as such director, servant or agent, shall be admissible in evidence against the accused.

(4) For the purposes of subsection (3) any record made or kept by a director, servant or agent of a corporate body or any document which was at any time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as such director, servant or agent, unless the contrary is proved.

(5) When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was, at the time of the commission of the offence, a director or servant of the corporate body shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it, and shall be liable to prosecution therefor, either jointly with the corporate body or apart therefrom, and shall on conviction be personally liable to punishment therefor.

(6) In criminal proceedings against a director or servant of a corporate body in respect of an offence -

(a) any evidence which would be or was admissible against that corporate body in a prosecution for that offence, shall be admissible against the accused;

(b) whether or not such corporate body is or was liable to prosecution for the said offence, any document, memorandum, book or record which was drawn up, entered up or kept in the ordinary course of business of that corporate body or which was at any time in the custody or under the control of any director, servant or agent of such corporate body, in his capacity as director, servant or agent, shall be *prima facie* proof of its contents and admissible in evidence against the accused, unless he is able to prove that at all material times he had no knowledge of the said document, memorandum, book or record, in so far as its contents are relevant to the

offence charged, and was in no way party to the drawing up of such document or memorandum or the making of any relevant entries in such book or record.

(7) When a member of an association of persons, other than a corporate body, has, in carrying on the business or affairs of that association or in furthering or in endeavouring to further its interests, committed an offence, whether by the performance of any act or by the failure to perform any act, any person who was, at the time of the commission of the offence, a member of that association, shall be deemed to be guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it: Provided that if the business or affairs of the association are governed or controlled by a committee or other similar governing body, the provisions of this subsection shall not apply to any person who was not at the time of the commission of the offence a member of that committee or other body.

(8) In any proceedings against a member of an association of persons in respect of an offence mentioned in subsection (7) any record which was made or kept by any member or servant or agent of the association within the scope of his activities as such member, servant or agent, or any document which was at any time in the custody or under the control of any such member, servant or agent within the scope of his activities as such member, servant or agent, shall be admissible in evidence against the accused.

(9) For the purposes of subsection (8) any record made or kept by a member or servant or agent of an association, or any document which was at any time in his custody or under his control, shall be presumed to have been made or kept by him or to have been in his custody or under his control within the scope of his activities as such member or servant or agent, unless the contrary is proved.

(10) In this section the word "director" in relation to a corporate body means any person who controls or governs that corporate body or who is a member of a body or group of persons which controls or governs that corporate body or, where there is no such body or group, who is a member of that corporate body.

(11) The provisions of this section shall be additional to and not in substitution for any other law which provides for a prosecution against corporate bodies or their directors or servants or against associations of persons or their members.

(12) Where a summons under this Act is to be served on a corporate body, it shall be served on the director or servant referred to in subsection (2) and in the manner referred to in section 54(2).

333. Minister may invoke decision of Appellate Division on question of law

Whenever the Minister has any doubt as to the correctness of any decision given by any superior court in any criminal case on a question of law, or whenever a decision in any criminal case on a question of law is given by any division of the Supreme Court which is in conflict with a decision in any

criminal case on a question of law given by any other division of the Supreme Court, the Minister may submit such decision or, as the case may be, such conflicting decisions to the Appellate Division of the Supreme Court and cause the matter to be argued before that Court in order that it may determine such question of law for the future guidance of all courts.

334. Minister may declare certain persons peace officers for specific purposes and liability for damages

(1)

(a) The Minister may by notice in the *Gazette* declare that any person who, by virtue of his office, falls within any category defined in the notice, shall, within an area specified in the notice, be a peace officer for the purpose of exercising, with reference to any provision of this Act or any offence or any class of offences likewise specified, the powers defined in the notice.

(b) The powers referred to in paragraph (a) may include any power which is not conferred upon a peace officer by this Act.

(2)

(a) No person who is a peace officer by virtue of a notice issued under subsection (1) shall exercise any power conferred upon him under that subsection unless he is at the time of exercising such power in possession of a certificate of appointment issued by his employer, which certificate shall be produced on demand.

(b) A power exercised contrary to the provisions of paragraph (a) shall have no legal force or effect.

(3) The Minister may by notice in the *Gazette* prescribe -

(a) the conditions which shall be complied with before a certificate of appointment may validly be issued under subsection (2)(a);

(b) any matter which shall appear in or on such certificate of appointment in addition to any matter which the employer may include in such certificate.

(4) Where the employer of any person who becomes a peace officer under the provisions of this section would be liable for damages arising out of any act or omission by such person in the discharge of any power conferred upon him under this section, the State shall not be liable for such damages unless the State is the employer of that person, in which event the department of State, including a provincial administration, in whose service such person is, shall be so liable.

335. Person who makes statement entitled to copy thereof

Whenever a person has in relation to any matter made to a peace officer a statement in writing or a statement which was reduced to writing, and criminal proceedings are thereafter instituted against such person in connection with that matter, the person in possession of such statement shall furnish the person who made the statement, at his request, with a copy of such statement.

335A. Prohibition of publication of identity of persons towards or in connection with whom certain offences have been committed

(1) No person shall, with regard to any offence referred to in section 153(3)(a) and (b), as from the date on which the offence in question was committed or allegedly committed, until the prohibition in terms of section 154(2)(b) of the publication of information relating to the charge in question commences, publish any information which might reveal the identity of the person towards or in connection with whom the offence was committed or allegedly committed, except with the authorization of a magistrate granted on application in chambers, with due regard to the wishes of the person towards or in connection with whom the offence was committed.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment if the person whose identity has been revealed is over the age of 18 years, and if such person is under the age of 18 years, to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(Section 335A(2) substituted by section 68 of Act 32 of 2007)

(3) The provisions of section 300 are applicable, with the changes required by the context, upon the conviction of a person in terms of subsection (2) and if the person whose identity has been revealed suffered any physical, psychological or other injury or loss of income or support.

(Section 335A(3) added by section 68 of Act 32 of 2007)

(Section 335A inserted by section 4 of Act 103 of 1987)

335B. Medical examination of minors towards or in connection with whom certain offences have been committed

(1) If a police official charged with the investigation of a case is of the opinion that it is necessary that a minor or a person who is mentally disabled in respect of whom it is alleged that a sexual offence as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, or an offence of a violent nature has been committed be examined by a district surgeon or, if he is not available, by a registered medical practitioner, but that the parent or guardian or curator or custodian of such minor or mentally disabled person -

(a) cannot be traced within a reasonable time;

(b) cannot grant consent in time;

(c) is a suspect in respect of the offence in consequence of which the examination must be conducted;

(d) unreasonably refuses to consent that the examination be conducted;

(e) is incompetent on account of mental disorder to consent that the examination be conducted; or

(f) is deceased,

a magistrate may, on the written application of that police official and if he is satisfied that the medical examination is necessary, grant the necessary consent that such examination be conducted.

(Section 335B(1) substituted by section 68 of Act 32 of 2007)

(2) If a magistrate is not available to grant consent as referred to in subsection (1), a commissioned officer as defined in section 1 of the Police Act, 1958 (Act No.7 of 1958), or the police official in charge of the local police station may in writing grant such consent if the police official charged with the investigation of the case declares under oath that the consent of a magistrate cannot be obtained within a reasonable period of time and the district surgeon or registered medical practitioner declares under oath that the purpose of the medical examination will be defeated if the examination is not conducted forthwith.

(Section 335B inserted by section 7 of Act 4 of 1992)

336. Act or omission constituting offence under two or more laws

Where an act or an omission constitutes an offence under two or more statutory provisions or is an offence against a statutory provision and the common law, the person guilty of such act or omission shall, unless the contrary intention appears, be liable to be prosecuted and punished under either statutory provision or, as the case may be, under the statutory provision or the common law, but shall not be liable to more than one punishment for the act or omission constituting the offence.

337. Estimating age of person

If in any criminal proceedings the age of any person is a relevant fact of which no or insufficient evidence is available at the proceedings, the presiding judge or judicial officer may, in addition to the provisions of sections 14 to 16 of the Child Justice Act, 2008, estimate the age of such person by his or her appearance or from any information which may be available, and the age so estimated shall be deemed to be the correct age of such person, unless-

(a) it is subsequently proved that the said estimate was incorrect; and

(b) the accused at such proceedings could not lawfully have been convicted of the offence with which he or she was charged if the correct age had been proved.

(Section 337 substituted by section 99(1) of Act 75 of 2008)

338. Production of document by accused in criminal proceedings

Where any law requires any person to produce any document at any criminal proceedings at which such person is an accused, and such person fails to produce such document at such proceedings, such person shall be guilty of an offence, and the court may in a summary manner enquire into his failure to produce the document and, unless such person satisfies the court that his failure was not due to any fault on his part, sentence him to any punishment provided for in such law, or, if no punishment is so provided, to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

(Section 338 substituted by section 24 of Act 33 of 1986)

339. Removal of accused from one prison to another for purpose of attending at criminal proceedings

Whenever an accused is in custody and it becomes necessary that he be removed from one prison to another prison for the purpose of attending his trial, the magistrate of the district in which the accused is in custody shall issue a warrant for the removal of the accused to such other prison.

340. Prison list of unsentenced prisoners and witnesses detained

Every head of a prison within the area for which any session or circuit of any superior court is held for the trial of criminal cases shall deliver to that court at the commencement of each such session or circuit a list -

(a) of the unsentenced prisoners who, at such commencement, have been detained within his prison for a period of ninety days or longer; and

(b) of witnesses detained under section 184 or 185 and who, at such commencement, are being detained within his prison,

and such list shall, in the case of each such prisoner and each such witness, specify the date of his admission to the prison and the authority for his detention which shall, in the case of a witness, state whether the detention is under section 184 or 185, and shall further specify, in the case of each such prisoner, the cause of his detention.

341. Compounding of certain minor offences

(1) If a person receives from any peace officer a notification in writing alleging that such person has committed, at a place and upon a date and at a time or during a period specified in the notification, any offence likewise specified, of any class mentioned in Schedule 3, and setting forth the amount of the fine which a court trying such person for such offence would probably impose upon him, such person may within thirty days after the receipt of the notification deliver or transmit the notification, together with a sum of money equal to the said amount, to the magistrate of the district or area wherein the offence is alleged to have been committed, and thereupon such person shall not be prosecuted for having committed such offence.

(2)

(a) Where a notification referred to in subsection (1) is issued by a peace officer in the service of a local authority in respect of an offence committed within the area of jurisdiction of such local authority, any person receiving the notification may deliver or transmit it together with a sum of money equal to the amount specified therein to such local authority.

(Section 341(2)(a) substituted by section 9 of Act 64 of 1982)

(b) Any sum of money paid to a local authority as provided in paragraph (a) shall be deemed to be a fine imposed in respect of the offence in question.

(Section 341(2)(b) substituted by section 9 of Act 64 of 1982)

(c) Not later than seven days after receipt of any sum of money as provided in paragraph (a), the local authority concerned shall forward to the magistrate of the district or area wherein the offence is alleged to have been committed a copy of the notification relating to the payment in question.

(d) If the magistrate finds that the amount specified in the notification exceeds the amount determined in terms of subsection (5) in respect of the offence in question, he shall notify the local authority of the amount whereby the amount specified in the notification exceeds the amount so determined and the local authority concerned shall immediately refund the amount of such excess to the person concerned.

(e) For the purposes of this subsection 'local authority' means any institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act 32 of 1961), and includes-

(i) a regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985);

(ii) any institution or body established under the Rural Areas Act (House of Representatives) 1987 (Act No. 9 of 1987);

(Section 341(2)(e)(ii) amended by section 4 of Act 18 of 1996)

(iii) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act 102 of 1982);

(iv) a local government body contemplated in section 30(2)(a) of the Black Administration Act.]927 (Act 38 of 1927); and

(v) any committee referred to in section 17(1) of the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983).

(Section 341(2)(e) substituted by section 25 of Act 33 of 1986)

(Section 341(2)(e) substituted by section 16 of Act 26 of 1987)

(3) Any money paid to a magistrate in terms of subsection (1) shall be dealt with as if it had been paid as a fine for the offence in question.

(4) The Minister may from time to time by notice in the *Gazette* add any offence to the offences mentioned in Schedule 3, or remove therefrom any offence mentioned therein.

(5) The amount to be specified in any notification issued under this section as the amount of the fine which a court would probably impose in respect of any offence, shall be determined from time to time for any particular area by the magistrate of the district or area in which such area is situated, and may differ from the admission of guilt fine determined under section 57(5)(a) for the offence in question.

342. Conviction or acquittal no bar to civil action for damages

A conviction or an acquittal in respect of any offence shall not bar a civil action for damages at the instance of any person who has suffered damages in consequence of the commission of that offence.

342A. Unreasonable delays in trials

(1) A court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness.

(2) In considering the question whether any delay is unreasonable, the court shall consider the following factors:

(a) The duration of the delay;

(b) the reasons advanced for the delay;

(c) whether any person can be blamed for the delay;

(d) the effect of the delay on the personal circumstances of the accused and witnesses;

(e) the seriousness, extent or complexity of the charge or charges;

(f) actual or potential prejudice caused to the State or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost;

(g) the effect of the delay on the administration of justice;

(h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;

(i) any other factor which in the opinion of the court ought to be taken into account.

(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-

(a) refusing further postponement of the proceedings;

(b) granting a postponement subject to any such conditions as the court may determine;

(c) where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;

(d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed;

(e) that-

(i) the State shall pay the accused concerned the wasted costs incurred by the accused as a result of an unreasonable delay caused by an officer employed by the State;

(ii) the accused or his or her legal adviser, as the case may be, shall pay the State the wasted costs incurred by the State as a result of an unreasonable delay caused by the accused or his or her legal adviser, as the case may be; or that the matter be referred to

the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.

(Commencement date of section 342A(3)(e): to be proclaimed)

(4)

(a) An order contemplated in subsection (3)(a), where the accused has pleaded to the charge, and an order contemplated in subsection (3)(d), shall not be issued unless exceptional circumstances exist and all other attempts to speed up the process have failed and the defence or the State, as the case may be, has given notice beforehand that it intends to apply for such an order.

(b) The attorney-general and the accused may appeal against an order contemplated in subsection (3)(d) and the provisions of sections 310A and 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals and, in the case of an appeal by the accused, the provisions of section 309 and 316 shall apply *mutatis mutandis* .

(5) Where the court has made an order contemplated in subsection (3)(e)-

(a) the costs shall be taxed according to the scale the court deems fit; and

(b) the order shall have the effect of a civil judgment of that court.

(Commencement date of section 342A(5): to be proclaimed)

(6) If, on notice of motion, it appears to a superior court that the institution or continuance of criminal proceedings is being delayed unreasonably in a lower court which is seized with a case but does not have jurisdiction to try the case, that superior court may, with regard to such proceedings, institute the investigation contemplated in subsections (1) and (2) and issue any order contemplated in subsection (3) to the extent that it is applicable.

(7)

(a) The National Director of Public Prosecutions must, within 14 days after the end of January and of July of each year, submit a report to the Cabinet member responsible for the administration of justice, containing the particulars indicated in the Table of Awaiting Trial Accused in respect of each accused whose trial has not yet commenced in respect of the leading of evidence, as contemplated in section 150 and who, by the end of the month in question, has been in custody for a continuous period exceeding-

(i) 18 months from date of arrest, where the trial is to be conducted in a High Court;

(ii) 12 months from date of arrest, where the trial is to be conducted in a regional court; and

(iii) six months from date of arrest, where the trial is to be conducted in a magistrate's court.

(b) The Cabinet member responsible for the administration of justice must, within 14 days of receipt of a report contemplated in paragraph (a), table such report in Parliament.

Table of Awaiting Trial Accused							
Court and case number	Name and age of accused	Particulars of charge(s)	Period in detention	Number of court appearances	Date of next court appearance	Reasons why trial has not commenced	Whether bail has been granted and if so, the conditions of bail

(Section 342A(7) added by section 7 of Act 55 of 2003)

(Section 342A inserted by section 13 of Act 86 of 1996)

343. …….

(Section 343 repealed by section 1 of Act 49 of 1996)

344. Repeal of laws

(1) Subject to the provisions of subsection (2), the laws specified in Schedule 4 are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any regulation, rule, notice, approval, authority, return, certificate, document, direction or appointment made, issued, given or granted, and any other act done under any provision of any law repealed by this Act shall, subject to the provisions of subsection (3), be deemed to have been made, issued, given, granted or done under the corresponding provisions of this Act.

(3) Notwithstanding the repeal of any law under subsection (1), criminal proceedings which have under such law at the date of commencement of this Act been commenced in any superior court, regional court or magistrate's court and in which evidence has at such date been led in respect of the relevant charge, shall, if such proceedings have at that date not been concluded, be continued and concluded under such law as if it had not been repealed.

345. Short title and date of commencement

(1) This Act shall be called the Criminal Procedure Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

(2) The State President may under subsection (1) fix different dates in respect of different provisions of this Act.

(Section 345(2) amended by section 1 of Act 49 of 1996)

SCHEDULE 1

(Sections 40 and 42)

Treason.

Sedition.

Public violence

Murder.

Culpable homicide.

Rape or compelled rape as contemplated in sections 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively. Trafficking in persons for sexual purposes by a person contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

Bestiality as contemplated in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

Robbery.

Kidnapping.

Childstealing

Assault, when a dangerous wound is inflicted.

Arson.

Malicious injury to property

Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.

Theft, whether under the common law or a statutory provision.

Receiving stolen property knowing it to have been stolen.

Fraud.

Forgery or uttering a forged document knowing it to have been forged.

Offences relating to the coinage.

Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.

Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act 13 of 2013.

Publisher's Note:

Section 4(1) and 4(2) of the Prevention and Combating of Torture of Persons Act 13 of 2013 read as follows:

"4. (1) Any person who-

(a) commits torture;

(b) attempts to commit torture; or

(c) incites, instigates, commands or procures any person to commit torture,

is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

(2) Any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life."

(Schedule 1 substituted by section 17 of Act 26 of 1987)

(Schedule 1 amended by section 8 of Act 122 of 1998)

(Schedule 1 substituted by section 68 of Act 32 of 2007)

(Schedule 1 amended by section 11 of Act 13 of 2013)

SCHEDULE 2

Part I

Any offence under any law relating to the illicit possession, conveyance or supply of dependence-producing drugs or intoxicating liquor.

Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.

Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.

Theft, whether under the common law or a statutory provision

Part II

(Sections 59, 72)

Treason.

Sedition.

Murder.

Rape or compelled rape as contemplated in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

Any sexual offence against a child or a person who is mentally disabled as contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.

Trafficking in persons for sexual purposes by a person contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

Robbery.

Assault, when a dangerous wound is inflicted.

Arson.

Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.

Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud; forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds R2 500.

Any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones.

Any offence under any law relating to the illicit –

(a) possession of -

(i) dagga exceeding 115 grams; or

(ii) any other dependence-producing drugs; or

(b) conveyance or supply of dependence-producing drugs.

Any offence relating to the coinage.

Any conspiracy, incitement or attempt to commit any offence referred to in this Part.

Offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act 13 of 2013.

Publisher's Note:

Section 4(1) and 4(2) of the Prevention and Combating of Torture of Persons Act 13 of 2013 read as follows:

"4. (1) Any person who-

(a) commits torture;

(b) attempts to commit torture; or

(c) incites, instigates, commands or procures any person to commit torture,

is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

(2) Any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life."

(Schedule 2 Part II amended by section 15 of Act 62 of 2000)

(Schedule 2 Part II substituted by section 68 of Act 32 of 2007)

(Schedule 2 Part II amended by section 11 of Act 13 of 2013)

Part III

(Sections 59, 61, 72, 184, 185, 189.)

Sedition

Public violence

Arson.

Murder.

Kidnapping.

Childstealing.

Robbery.

Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.

Any conspiracy, incitement or attempt to commit any of the above-mentioned offences.

Treason

Offences referred to in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act 13 of 2013.

Publisher's Note:

Section 4(1) and 4(2) of the Prevention and Combating of Torture of Persons Act 13 of 2013 read as follows:

"4. (1) Any person who-

(a) commits torture;

(b) attempts to commit torture; or

(c) incites, instigates, commands or procures any person to commit torture,

is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

(2) Any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life."

(Schedule 2 Part III substituted by section 5 of Act 126 of 1992)

(Schedule 2 Part III amended by section 11 of Act 13 of 2013)

SCHEDULE 3

(Section 341.)

Any contravention of a bye-law or regulation made by or for any council, board or committee established in terms of any law for the management of the affairs of any division, city, town, borough, village or other similar community.

Any offence committed by

(a) driving a vehicle at a speed exceeding a prescribed limit;

(b) driving a vehicle which does not bear prescribed lights, or any prescribed means of identification;

(c) leaving or stopping a vehicle at a place where it may not be left or stopped, or leaving a vehicle in a condition in which it may not be left;

(d) driving a vehicle at a place where and at a time when it may not be driven;

(e) driving a vehicle which is defective or any part whereof is not properly adjusted, or causing any undue noise by means of a motor vehicle;

(f) owning or driving a vehicle for which no valid licence is held;

(g) driving a motor vehicle without holding a licence to drive it.

(Schedule 3 amended by section 18 of Act 56 of 1979)

SCHEDULE 4

LAWS REPEALED

No and Year of Law	Title	Extent of Repeal
Act 38 of 1916	Mental Disorders Act, 1916	Sections 29*bis* 27, 28, 29 and 29*bis*
Act 24 of 1922	South-West Africa Affairs Act, 1922	Section 2(1), so much of section 3 as is unrepealed, and sections 4, 6 and 7
Act 22 of 1926	South-West Africa Mental Disorders Act, 1926	So much as is unrepealed
Act 46 of 1935	General Law Amendment Act, 1935	Section 78 and of section 101 repealed so much as is unrepealed
Act 32 of 1944	Magistrates' Courts Act, 1944	Sections 93, 93*bis* and 94 to 105 inclusive
Act 32 of 1952	General Law Amendment Act, 1952	Section 9 and section 26 so much of as is unrepealed
Act 40 of 1952	Magistrates' Courts Amendment Act, 1952	Sections 22 to 26 inclusive

Act 56 of 1955	Criminal Procedure Act, 1955	The whole, except sections 319(3) and 384
Act 62 of 1955	General Law Amendment Act, 1955	Sections 13, 24, 25 and 26
Act 50 of 1956	General Law Amendment Act, 1956	Sections 22, 23, 24, 25, 27, 28, 29 and 31
Act 33 of 1957	Interpretation Act, 1957	Section 9
Act 68 of 1957	General Law Amendment Act, 1957	Section 5 in so far as it relates to criminal proceedings, and sections 40 and 45 to 59 inclusive
Act 9 of 1958	Criminal Procedure Amendment Act, 1958	The whole
Act 18 of 1958	Special Criminal Courts Amendment Act, 1958	The whole
Act 16 of 1959	Criminal Law Amendment Act, 1959	Sections 3 to 8 inclusive, 10, 11 and 15 to 49 inclusive
Act 75 of 1959	Criminal Law Further Amendment Act, 1959	Sections 3 to 6 inclusive
Act 33 of 1960	Children's Act, 1960	Sections 98 to 102 inclusive
Act 39 of 1961	General Law Amendment Act, 1961	Section 4
Act 45 of 1961	Interpretation Amendment Act, 1961	Section 3
Act 14 of 1962	Title Evidence Act, 1962	So much as is unrepealed
Act 76 of 1962	General Law Amendment Act, 1962	Sections 17 and 18
Act 93 of 1962	General Law Further Amendment Act, 1962	Sections 28 and 29
Act 19 of 1963	Magistrates' Courts Amendment Act, 1963	Sections 16 to 20 inclusive

Act 37 of 1963	General Law Amendment Act, 1963	Sections 1, 2 and 8 to 12 inclusive
Act 92 of 1963	Criminal Procedure Amendment Act, 1963	So much as is unrepealed
Act 93 of 1963	General Law Further Amendment Act, 1963	Sections 10 to 15 inclusive
Act 80 of 1964	General Law Amendment Act, 1964	Sections 12 and 22 to 30 inclusive
Act 16 of 1965	Prevention of Counterfeiting of Currency Act, 1965	Section 10
Act 25 of 1965	Civil Proceedings Evidence Act, 1965	The amendment of section 261 of the Criminal Procedure Act, 1955, contained in the Schedule
Act 96 of 1965	Criminal Procedure Amendment Act, 1965	So much as is unrepealed
Act 62 of 1966	General Law Amendment Act, 1966	Sections 7, 8 and 9
Act 102 of 1967	General Law Amendment Act, 1967	Sections 7 to 12 inclusive
Act 9 of 1968	Criminal Procedure Amendment Act, 1968	The whole
Act 70 of 1968	General Law Amendment Act, 1968	Sections 31 and 37 to 41 inclusive
Act 15 of 1969	Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, 1969	Sections 17 and 18
Act 17 of 1969	Magistrates' Courts Amendment Act, 1969	Section 4
Act 34 of 1969	Abolition of Juries Act, 1969	Sections 1 to 32 inclusive
Act 101 of 1969	General Law Amendment Act, 1969	Sections 5, 6, 7, 8 and 9
Act 53 of 1970	Magistrates' Courts Amendment Act, 1970	Section 18
Act 92 of 1970	General Law Further Amendment Act, 1970	Sections 4 and 14

Act 41 of 1971	Abuse of Dependence-producing Substances and Rehabilitation Centres Act 1971	Section 62
Act 102 of 1972	General Law Amendment Act, 1972	Section 9
Act 32 of 1974	Criminal Procedure Amendment Act, 1974	The whole
Act 33 of 1975	Criminal Procedure Amendment Act, 1975	The whole
Act 79 of 1976	Internal Security Amendment Act, 1976	Section 11
	SOUTH WEST AFRICA	
Proclamation 26 of 1920	The Fugitive Offenders and Neighbouring Territories Evidence Proclamation, 1920	In so far as it relates to the attendance by witnesses of criminal proceedings in courts in the Republic
Proclamation 30 of 1935	Criminal Procedure and Evidence Proclamation, 1935	In so far as it applies to the Eastern Caprivi Zipfel
Proclamation 8 of 1938	Procedure and Evidence Proclamation, 1938	Section 3 in so far as it relates to criminal proceedings
Ordinance 34 of 1963	Criminal Procedure Ordinance, 1963	The whole, except sections 300(3) and 370
Ordinance 35 of 1965	Criminal Procedure Amendment Ordinance, 1965	The whole
Ordinance 19 of 1966	Criminal Procedure Amendment Ordinance, 1966	The whole
Ordinance 19 of 1967	Criminal Procedure Amendment Ordinance, 1967	The whole
Ordinance 4 of 1968	General Law Amendment Ordinance, 1968	Sections 5 to 13 inclusive
Ordinance 3 of 1969	Criminal Procedure Amendment Ordinance, 1969	The whole

Ordinance 14 of 1975	Criminal Procedure Amendment Ordinance, 1975	The whole

SCHEDULE 5

(Sections 58 and 60(11) and (11A) and Schedule 6)

Treason.

Murder.

Attempted murder involving the infliction of grievous bodily harm.

Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, in circumstances other than those referred to in Schedule 6.

Any trafficking related offence by a commercial carrier as contemplated in section 71(6) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), if it is alleged that-

(a) the value of the dependence-producing substance in question is more than R50 000,00; or

(b) the value of the dependence-producing substance in question is more than R10 000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) the offence was committed by any law enforcement officer.

Any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament, or the possession of an automatic or semi-automatic firearm, explosives or armament.

Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), on account of being in possession of more than 1 000 rounds of ammunition intended for firing in an arm contemplated in section 39(2)(a)(i) of that Act.

Any offence relating to exchange control, extortion, fraud, forgery, uttering, theft, or any offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004-

(a) involving amounts of more than R500 000,00; or

(b) involving amounts of more than R100 000,00, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) if it is alleged that the offence was committed by any law enforcement officer-

(i) involving amounts of more than R10 000,00; or

(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

Sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively on a child under the age of 16 years.

An offence referred to in Schedule 1-

(a) and the accused has previously been convicted of an offence referred to in Schedule 1; or

(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 1.

The offences referred to in section 4(2) or (3), 13 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004

(Schedule 5 added by section 14 of Act 75 of 1995)
(Schedule 5 substituted by section 9 of Act 85 of 1997)
(Schedule 5 amended by section 36 of Act 12 of 2004)
(Schedule 5 amended by section 27 of Act 33 of 2004)
(Schedule 5 substituted by section 68 of Act 32 of 2007)

SCHEDULE 6

(Sections 50(6), 58 and 60(11) and (11A))

Murder, when-

(a) it was planned or premeditated;

(b) the victim was-

(i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position; or

(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1;

(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences:

(i) Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or

(ii) robbery with aggravating circumstances; or

(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy.

Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively-

(a) when committed-

(i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;

(ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;

(iii) by a person who is charged with having committed two or more offences of rape; or

(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;

(b) where the victim-

(i) is a person under the age of 16 years;

(ii) is a physically disabled person who, due to his or her physical disability, is rendered particularly vulnerable; or

(iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;

(c) involving the infliction of grievous bodily harm.

Trafficking in persons for sexual purposes by a person as contemplated in section 71(1) or (2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

Robbery, involving-

(a) the use by the accused or any co-perpetrators or participants of a firearm;

(b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or

(c) the taking of a motor vehicle.

An offence referred to in Schedule 5-

(a) and the accused has previously been convicted of an offence referred to in Schedule 5 or this Schedule; or

(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 5 or this Schedule.

The offences referred to in section 2, 3(2)(a), 4(1), 5, 6, 7, 8, 9,10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, section 2(1) and (2) of the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), section 26(1)(j) of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993) and section 56(1)(h) of the Nuclear Energy Act, 1999 (Act No. 46 of 1999).

(Schedule 6 added by section 10 of Act 85 of 1997)

(Schedule 6 amended by section 27 of Act 33 of 2004)

(Schedule 6 substituted by section 68 of Act 32 of 2007)

SCHEDULE 7

(Section 59A)

Public violence.

Culpable homicide.

Bestiality as contemplated in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

Assault, involving the infliction of grievous bodily harm.

Arson.

Housebreaking, whether under the common law or a statutory provision, with intent to commit an offence.

Malicious injury to property.

Robbery, other than a robbery with aggravating circumstances, if the amount involved in the offence does not exceed R20 000,00.

Theft and any offence referred to in section 264(1)(a), (b) and (c), if the amount involved in the offence does not exceed R20 000,00.

Any offence in terms of any law relating to the illicit possession of dependence-producing drugs.

Any offence relating to extortion, fraud, forgery or uttering if the amount of value involved in the offence does not exceed R20 000,00.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

(Schedule 7 added by section 10 of Act 85 of 1997)

(Schedule 7 amended by section 10 of Act 34 of 1998)

(Schedule 7 amended by section 15 of Act 62 of 2000)

(Schedule 7 substituted by section 68 of Act 32 of 2007)