

REPUBLIC OF SOUTH AFRICA

**CRIMINAL PROCEDURE
AMENDMENT BILL**

(As introduced in the National Assembly as a section 75 Bill)

(MINISTER OF JUSTICE)

[B 7—99]

REPUBLIEK VAN SUID-AFRIKA

**STRAFPROSESWYSIGINGS-
WETSONTWERP**

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

(MINISTER VAN JUSTISIE)

[W 7—99]

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GENERAL EXPLANATORY NOTE:

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

To amend the Criminal Procedure Act, 1977, so as to abolish the requirement that certain cases dealt with by a magistrate's court must be submitted to a High Court for review; and to provide for matters connected therewith.

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

Amendment of section 116 of Act 51 of 1977, as amended by section 19 of Act 116 of 1993 and section 6 of Act 86 of 1996

1. Section 116 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(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] High Court 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] 304.”.

Repeal of sections 302 and 303 of Act 51 of 1977

2. Sections 302 and 303 of the principal Act are hereby repealed.

Amendment of section 304 of Act 51 of 1977, as amended by section 13 of Act 105 of 1982

3. Section 304 of the principal Act is hereby amended—

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

“(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.]** (a) If in any criminal case in which a magistrate’s court or a regional court has imposed a sentence, it is brought to the notice of any judge of the High Court having jurisdiction that the proceedings in which the sentence was imposed were not in accordance with justice, such judge may direct the clerk of the court concerned to forward to the registrar of the said High Court—

- (i) a certified copy of the record of the proceedings in question;
 - (ii) such remarks as the presiding judicial officer may wish to append to such copy; and
 - (iii) any written statement or argument which the person convicted may, within three days after the direction in terms of this section, furnish to the clerk of the court,
- and the registrar must, as soon as possible, lay the same in chambers before a judge of the said High Court.

(b) If, upon considering the proceedings, remarks and statement or argument referred to in paragraph (a) and any further information or evidence which may, by direction of the judge, be supplied or taken by the court concerned, it appears to the judge that the proceedings are in accordance with justice, the judge shall certify the record to that effect, and the registrar concerned shall return the record to the said court.”;

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

“(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]** the judge shall obtain from the judicial officer who presided at the trial a statement setting forth his or her 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] High Court 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] said High Court, 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 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 or regional court;
- (iii) set aside or correct the proceedings of the magistrate’s court or regional court;

- (iv) generally give such judgment or impose such sentence or make such order as the magistrate's court or regional 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 or regional court with instructions to deal with any matter in such manner as the **[provincial or local division]** High Court 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.”; and
- (c) by the deletion of subsection (4).

Substitution of section 304A of Act 51 of 1977, as inserted by section 22 of Act 33 of 1986

4. The following section is hereby substituted for section 304A of the principal Act:

“Review of proceedings before sentence

304A. (a) If a magistrate or regional magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he or she brought in a conviction 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 them, together with the record of the proceedings, to the registrar of the **[provincial division]** High Court having jurisdiction, and such registrar shall, as soon as is 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 or her in terms of section **[303]** 304(1).

(b) When a magistrate or a regional magistrate acts in terms of paragraph (a), he or she 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 or she may deem fit.”.

Repeal of section 306 of Act 51 of 1977

5. Section 306 of the principal Act is hereby repealed.

Amendment of section 308A of Act 51 of 1977, as inserted by section 50 of Act 129 of 1993

6. Section 308A of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“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)]** 304(1), unless the court which imposed the sentence releases the person convicted—”.

Saving

7. Nothing in this Act shall affect any matter which at the commencement of this Act was subject to review by a judge of a High Court, and proceedings in respect of such a matter shall be continued and concluded in every respect as if this Act had not been passed.

Short title

8. This is the Criminal Procedure Amendment Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE CRIMINAL PROCEDURE AMENDMENT BILL

1. The Bill aims to repeal sections 302 and 303 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

2. Section 302 of the Criminal Procedure Act, 1977, provides that every case in which an unrepresented accused person is sentenced by a magistrate with less than seven years' experience, to a fine exceeding R2 500 or to imprisonment exceeding three months and by a magistrate with more than seven years' experience, to a fine exceeding R5 000 or to imprisonment exceeding six months, must be submitted to a judge of a High Court for review.

3. In terms of section 303 of the Criminal Procedure Act, 1977, the clerk of the court must in each case submit the record of the proceedings to the Registrar of the High Court, who must lay such record before a judge in chambers. If the judge is satisfied that the proceedings are in accordance with justice, he or she must endorse a certificate to that effect on the record. If it appears to the judge that the proceedings are not in accordance with justice or that doubt exists in that respect, he or she must obtain from the judicial officer who presided at the trial a statement setting forth his or her reasons for convicting the accused and for the sentence imposed. The judge must thereupon lay the record of the proceedings and the said statement before the High Court for consideration by that court as a court of appeal. However, 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 High Court, 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.

4. Experience has shown that a very small percentage of findings of magistrates are altered on review. The court hours spent by judges considering such records, the time spent by members of the prosecuting authority preparing and arguing such review cases and the enormous transcription costs involved in such review cases do not warrant the continued existence of this automatic review procedure.

5. The Judiciary, the National Director of Public Prosecutions and other relevant role-players were consulted.

6. The Department of Justice and the State Law Advisers are of the opinion that the Bill must be dealt with in terms of the procedure established by section 75 of the Constitution since the Bill does not contain any provision to which the procedure set out in section 74 or 76 of the Constitution applies.