

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CRIMINAL PROCEDURE
AMENDMENT BILL**

[B 81—97]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 81A—97]

REPUBLIEK VAN SUID-AFRIKA

1997-11-12

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
STRAFPROSESWYSIGINGS-
WETSONTWERP**

[w 81—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 81A—97]

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AMENDMENTS AGREED TO

CRIMINAL PROCEDURE AMENDMENT BILL
[B 81-97]

CLAUSE 2

1. On page 4. in line 3, to omit “or” and to substitute “and”
2. On page 4. in line 4; ~~“in fact”~~ to insert “in an appropriate case”.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 2:

Insertion of sections 309B, 309C and 309D in Act 51 of 1977

3. The following sections are hereby inserted after section 309A in the principal Act:

“Application for leave to appeal

309B. (1) An accused who wishes to appeal against any decision or order of a lower court must, within 14 days or within such extended period as may be allowed on application and on good cause shown, apply to that court for leave to appeal against the decision or order.

(2)(a) The application must be heard by the magistrate whose decision or order is the subject of the prospective appeal: Provided that if that magistrate is unavailable, the application may be heard by any other magistrate of the court concerned, to whom it is assigned for hearing.

(b) Notice must be given to the attorney-general concerned and the accused of the date fixed for the hearing of the application.

(3) Every application for leave to appeal must set forth clearly and specifically the grounds upon which the accused desires to appeal: Provided that if the accused applies verbally for such leave immediately after the passing of the decision or order, he or she must state such grounds and they must be taken down in writing and form part of the record.

(4) When in any application under subsection(1) for leave to appeal it is shown by affidavit—

(a) that further evidence which would presumably be accepted as true, is available;

(b) that if accepted the evidence could reasonably lead to a different decision or order; and

(c) save in exceptional cases, that there is a reasonably

acceptable explanation for the failure to produce the evidence before the close of the trial, the court hearing the application may receive that evidence and further evidence rendered necessary thereby, including evidence in rebuttal called by the prosecutor and evidence called by the court.

(5) Any evidence received in pursuance of an application under subsection (1) for leave to appeal, must for the purposes of an appeal be deemed to be evidence taken or admitted at the trial.

(6) If the application 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 court of appeal.

Petition procedure

309C. (1) If an application for leave to appeal under section 309B(1) or for an extension of the period referred to in that subsection or for the extension of the period within which an appeal must be noted in terms of section 309(2) (hereinafter referred to as an application for condonation), or an application to call further evidence as contemplated in section 309 B(4), is refused, the accused may, within 21 days of such refusal or within such extended period as may on good cause be allowed, by petition addressed to the Judge President of the division of the High Court having jurisdiction, submit an application for leave to appeal or for condonation or for leave to call further evidence, or all such applications, as the case may be.

(2) An accused who submits a petition as contemplated in subsection (1) must at the same time give notice thereof to the clerk of the magistrate's court where the application was refused.

(3) When receiving notice of a petition as contemplated in subsection (2), the clerk of the court must without delay submit copies of the application concerned together with the magistrate's reasons for refusal of the application, to the registrar of the court of appeal.

(4) (a) A petition contemplated 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 by the Judge President or by any other judge designated by the Judge President.

(5) The judges considering the petition may—

- (a) call for any further information from the magistrate who heard the application for condonation or the application for leave to appeal or the application for leave to call further evidence, or from the magistrate who presided at the trial to which any such application relates;
- (b) order that **the** application or applications in question or any of them be **argued** before them at a time and place appointed by them;
- (c) whether they **have** acted under paragraph (a) or (b) or not—
 - (i) in the case of **an application** for condonation, grant or refuse **the application** and, if the application is granted, 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, if they deem it expedient, that an application for leave to appeal must be submitted under subsection (1) within the period fixed by them as if it had been refused by the court referred to in section 309B(1);
- (ii) in the case of an application for leave to appeal or an application for leave to call further evidence, grant or refuse the application or, if they are of the opinion that the application for leave to call further evidence should have been granted, they may, before deciding upon the application for leave to appeal, or, in the case where the court referred to in section 309B(1) has granted the application for leave to appeal but has refused leave to call further evidence. set aside the refusal of the said court to grant leave to call further evidence and remit the matter in order that further evidence may be received in accordance with the provisions of section 309B(4); and
- (d) refer the matter to the court of appeal for consideration. whether upon argument or otherwise, and that court may thereupon deal with the matter in any manner referred to in paragraph (c).
- (6) Notice must be given to the attorney-general concerned and the accused person of the date fixed for the hearing of an application under this section, and of any place appointed under subsection (5) for any hearing.

Explanation of certain rights to unrepresented accused

309D.(1) An accused 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.

(2) An accused who is unrepresented and whose application in terms of section 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. “”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 3:

Savings

4. (1) Pending the commencement of the Legal Aid Guide as contemplated in-section 3A of the Legal Aid Act, 1969, and to the extent that the Legal Aid Guide, existing at the commencement of this Act, does not regulate the position of the granting of legal aid or legal representation in respect of the proceedings referred to in section 3 of this Act. the Legal Aid Board shall be competent to draft

directives, in consultation with the Minister. in terms of which legal aid or legal representation is rendered or made available for purposes of section 3 of this Act.

(2) (a) The directives referred to in subsection (1) must be published in the *Gazette*.

(b) Before the directives are published in the *Gazette*, they must be submitted to Parliament and tabled as soon as possible.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 3:

Short title and commencement

5. (1) This Act shall be called the Criminal Procedure Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.