

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
CRIMINAL LAW (SENTENCING)
AMENDMENT BILL**

[B 15—2007]

*(As agreed to by the Portfolio Committee on Justice and
Constitutional Development (National Assembly))*

[B 15A—2007]

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AMENDMENTS AGREED TO

CRIMINAL LAW (SENTENCING) AMENDMENT BILL [B 15—2007]

LONG TITLE

1. On page 2, in the ninth line of the long title, after “Schedule 2;” to insert:

to amend Schedule 2 in order to further regulate the offences in respect of which discretionary minimum sentences are prescribed;
2. On page 2, in the fifteenth line of the long title, after “first instance;” to insert:

to amend the Prevention of Organised Crime Act, 1998, so as to effect a consequential amendment;

CLAUSE 1

1. On page 3, from line 27 to line 30, to omit the proviso and to substitute:

 Provided that the maximum [sentence] term of imprisonment that a regional court may impose in terms of this subsection shall not **[be more than five years longer than]** exceed the minimum [sentence] term of imprisonment that it **[may]** must impose in terms of this subsection by more than five years.
2. On page 3, in line 35, after “sentence” to insert:

: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years
3. On page 3, from line 39 to line 42, to omit subparagraphs (i) to (iii) and to substitute:

(i) The complainant’s previous sexual history;
(ii) an apparent lack of physical injury to the complainant;
(iii) an accused person’s cultural or religious beliefs about rape; or
(iv) any relationship between the accused person and the complainant prior to the offence being committed.
4. On page 3, in line 50, after “of a” to insert “minimum”.
5. On page 3, from line 53 to line 55, to omit subsection (b) and to substitute:

(b) Not more than half of a minimum sentence imposed in terms of subsection (2) may be suspended as contemplated in section 297(4) of the Criminal Procedure Act, 1977, if the accused person was 16 years of age or older, but under the age of 18 years, at the time of the commission of the offence in question.
6. On page 3, in line 57, to omit “a **[child]**” and to substitute “**[a child]** an accused”.
7. On page 3, in line 57, to omit “of—” and to substitute “of”.

8. On page 3, in line 58, to omit “(a)”.
9. On page 3, in line 60, to omit “(2)(a) or (b); or” and to substitute “(2).”.
10. On page 3, from line 61 to line 62, to omit paragraph (b).
11. On page 4, in line 1, to omit “a [child]” and to substitute “[a child] an accused”.
12. On page 4, in line 2, to omit “the [child]” and to substitute “[the child] that”.

NEW CLAUSES

1. That the following be New Clauses:

Insertion of section 53A in Act 105 of 1997

4. The following section is inserted in the Criminal Law Amendment Act, 1997:

“Transitional provision

53A. If a regional court has, prior to the date of the commencement of the Criminal Law (Sentencing) Amendment Act, 2007—

- (a) committed an accused for sentence by a High Court under this Act, the High Court must dispose of the matter as if the Criminal Law (Sentencing) Amendment Act, 2007, had not been passed; or
- (b) not committed an accused for sentence by a High Court under this Act, then the regional court must dispose of the matter in terms of this Act, as amended by the Criminal Law (Sentencing) Amendment Act, 2007.”.

Amendment of Schedule 2 to Act 105 of 1997, as amended by section 37 of act 62 of 2000 and section 27(1) of Act 33 of 2004

5. Schedule 2 to the Criminal Law Amendment Act, 1997, is amended—

- (a) by the addition in Part I after paragraph (d) of the paragraphs setting out the categories of “murder”, of the following paragraphs:
 - “(e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim;
 - (f) the death of the victim resulted from, or is directly related to, any offence contemplated in section 1(a) to (e) of the Witchcraft Suppression Act, 1957 (Act No. 3 of 1957).”; and
- (b) by the substitution for Part IV of the following Part:

“PART IV

Any [offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act 51 of 1977) other than an offence referred to in Part I, II or III of this Schedule] of the following offences, if the accused had with him or her at the time a firearm, which was intended for use as such, in the commission of such offence:

Treason;
Sedition;

Public violence;
Robbery, other than a robbery referred to in Part I or II of this Schedule;
Kidnapping;
An offence involving an assault, when a dangerous wound is inflicted
with a firearm, other than an offence referred to in Part I, II or III this
Schedule;
Breaking or entering any premises, whether under the common law or
a statutory provision, with intent to commit an offence;
Escaping from lawful custody.”.

CLAUSE 4

1. On page 4, in line 41, to omit “life imprisonment” and to substitute “imprisonment for life”.

CLAUSE 5

1. On page 5, from line 4 to line 10, to omit subsections (3) and (4) and to substitute:

“(3) The prosecution policy must determine the circumstances under which prosecutions shall be instituted in the High Court as a court of first instance in respect of offences referred to in Schedule 2 to the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997).

(4) The National Director must issue policy directives pursuant to the policy contemplated in subsection (3), regarding the institution of prosecutions in respect of offences referred to in Schedule 2 to the Criminal Law Amendment Act, 1997.

(5) The prosecution policy and the policy directives contemplated in subsections (3) and (4) above, must be issued within three months of the date of the commencement of the Criminal Law (Sentencing) Amendment Act, 2007.”.

CLAUSE 6

1. Clause rejected.

NEW CLAUSE

1. That the following be a New Clause:

Amendment of section 3 of Act 121 of 1998

9. Section 3 of the Prevention of Organised Crime Act, 1998, is amended—

- (a) by the deletion of subsection (2)(ii); and
- (b) by the deletion of subsection (3).

CLAUSE 7

1. On page 5, in line 22, after “operation on” to insert “31 December 2007 or an earlier”.