

REPUBLIC OF SOUTH AFRICA

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

[B 42—2008]

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

[B 42A—2008]

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AMENDMENTS AGREED TO

CRIMINAL PROCEDURE AMENDMENT BILL

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LONG TITLE

1. On page 2, in the third line, to omit “**or audio link**”.
2. On page 2, in the third line, after “or audio link;” to insert: “**to further regulate the falling away of certain convictions as previous convictions after the expiry of a fixed period;**”.
3. On page 2, in the fifth line, after “period;”, to insert: “**to provide for the expungement of certain criminal records of persons under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect;**”.

ENACTING PROVISION

1. On page 2, from the first line, to omit “**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-” and to substitute” Parliament of the Republic of South Africa enacts as follows:—”.

CLAUSE 1

1. On page 2, after line 15, to insert:

“(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;”
2. On page 2, in line 16, to omit “(b)” and to substitute “(c)”.
3. On page 2, in line 20, after “persons” to omit “, and ‘audio link’ has a corresponding meaning”.
4. On page 2, in line 21, to omit “(c)” and to substitute “(d)”.
5. On page 2, in line 23, to omit “(d)” and to substitute “(e)”.
6. On page 3, in line 1, to omit “(e)” and to substitute “(f)”.
7. On page 3, in line 2, to omit “video” and to substitute “audiovisual”.
8. On page 3, in line 25, after “proceedings”, to insert: “that person”.
9. On page 3, in line 26, to omit “he or she”.
10. On page 3, in line 27, to omit “he or she”.
11. On page 3, in line 32, to omit “contemplated” and to substitute “referred to”.
12. On page 3, in line 40, to omit “contemplated” and to substitute “referred to”.

13. On page 3, in line 42, to omit “him or her” and to substitute “that person”.
14. On page 3, in line 45, to omit “contemplated” and to substitute “referred to”.
15. On page 3, in line 48, to omit “contemplated” and to substitute “referred to”.
16. On page 3, after line 50, to insert:

(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.

17. On page 3, after line 59, to insert:

(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.

18. On page 4, in line 1, to omit “(2)” and to substitute “(3)”.
19. On page 4, in line 2, to omit “contemplated” and to substitute “referred to”.
20. On page 4, in line 3, to omit “(3)” and to substitute “(4)”.
21. On page 4, in line 10, to omit “contemplated” and to substitute “provided for”.

CLAUSE 2

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Substitution of section 271A of Act 51 of 1977, as inserted by section 12 of Act 5 of 1991 and amended by section 6 of Act 4 of 1992

2. The following section is hereby substituted for section 271A of the principal Act:

“Certain convictions fall away as previous convictions after expiration of 10 years

- 271A.** 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 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.”.

CLAUSE 3

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Insertion of sections 271B, 271C, 271D and 271E in Act 51 of 1977

3. The following sections are hereby inserted in the principal Act, after section 271A:

“Expungement of certain criminal records

271B. (1) (a) Where a court has imposed any of the following sentences on a person convicted of an offence, the criminal record of that person, containing the conviction and sentence in question, must, subject to paragraphs (b) and (c) 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:

- (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;
- (vii) a sentence of correctional supervision, referred to in section 276(1)(h) or (i); or
- (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.

(c) Any person who has been convicted of an offence referred to in—

- (i) section 9 of the Firearms Control Act, 2000 (Act No. 60 of 2000), does not qualify to have the criminal record arising from that offence expunged in terms of this section; or
- (ii) section 103(1) or (2) of that Act and who, by virtue of that conviction, has become or has been declared to be unfit to possess a firearm, does not, during the period he or she is unfit to possess a firearm, qualify to have the criminal record arising from that offence expunged in terms of this section.

(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.

Expungement of certain criminal records under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect

271C. (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), or section 6, read with section 6(2), of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945);
- (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);
- (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.

Expungement of certain criminal records by Criminal Record Centre

271D. (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.

Regulations

271E. 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.".