

REPUBLIC OF SOUTH AFRICA

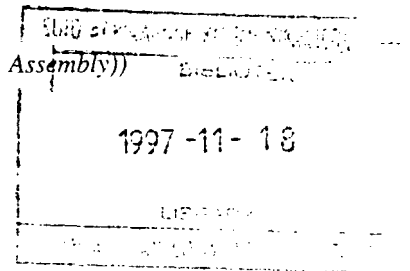
PORTFOLIO COMMITTEE AMENDMENTS
TO

CRIMINAL PROCEDURE
SECOND AMENDMENT BILL

[B 84-97]

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

[B 84A—97]



REPUBLIEK VAN SUID-AFRIKA

PORTEFEULJEKOMITEE-AMENDEMENTE
OP

TWEEDE STRAFPROSES-
WYSIGINGSWETSONTWERP

[W 84—97]

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

[W 84A—97]

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AMENDMENTS AGREED TO

CRIMINAL PROCEDURE SECOND AMENDMENT BILL [B 84-97]

CLAUSE 1

Clause rejected.

CLAUSE 2

1. On page 2, in line 16, to omit “principal Act” and to substitute:

Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act),

2. On page 2, after line 16, to insert the following paragraph:

- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(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 for the purposes of an order for his or her further detention, the court before which he or she would, but for the illness or other condition, have been brought for the purposes of such an order, may, upon 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, order 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 for the purpose of an order for his or her further detention for the purposes of his or her trial or his or her release; or
- (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.
- (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.”.

3. On page 2, from line 17, to omit paragraph (a) and to substitute:

(b) by the substitution for subsection (6) of the following subsection:

- (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 the detention to continue; or
- (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 shall be considered by a regional court: Provided that an attorney-general or a prosecutor authorised thereto by him or her may, where such court is, due to exceptional circumstances, not available, whether in general or in any particular case, direct that such bail application shall be considered by any other available lower court within the area of jurisdiction of such regional court.
- (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(11 A);
- (iii) the prosecutor informs the court that the person is going to be charged with an offence referred to in Schedule 6 and that the bail application is to be heard by a regional court;
- (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.”.

4. On page 4, from line 26, to omit paragraph (b) and to substitute:

(c) by the deletion of subsection (7).

NEW CLAUSES

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

Amendment of section 58 of Act 51 of 1977

3. Section 58 of the principal Act is hereby amended by the addition of the following proviso:

“: 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(1 1)(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.”.

Insertion of section 59A in Act 51 of 1977

3. The following section is hereby inserted in the principal Act after section 58:

“Attorney-general may authorise release on bail

59A. (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 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.”.

CLAUSE 3

1. On page 4, after line 48, to insert the following paragraph:

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

“(2) In bail proceedings the court [**may**]—

- (a) may postpone any such proceedings as contemplated in section 50(6) or (7);
- (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.”;

2. On page 4, in line 51, to omit “[the] a” and to substitute “the”.
3. On page 4, in line 52, to omit “to be”.

4. On page 4, in line 55, to omit “insertion in subsection (4) after paragraph (u)” and to substitute “addition to subsection (4)”.
5. On page 4, in line 57, to omit “(aA)” and to substitute “(e)”.
6. On page 4, in line 57, to omit “there is a” and to substitute “in exceptional circumstances there is the”.
7. On page 4, in line 59, to omit “(5)” and to substitute “(8)”.
8. On page 4, in line 60, to omit “(5A)” and to substitute “(8A)”.
9. On page 4, in line 60, to omit “contemplated in subsection (4)(aA)” and to substitute “in subsection (4)(e)”.
10. On page 4, in line 61, after “may” to insert “, where applicable,”.
11. On page 6, in line 12, to omit “legitimacy or efficiency of” and to substitute “public confidence in”.
12. On page 6, from line 16, to omit subsection (11) and to substitute:

(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.

13. On page 6, in line 40, to omit the second “subsection” and to substitute “subsections”.
14. On page 6, in line 54, after “charge” to insert “to be brought”.
15. On page 6, after line 55, to insert the following subsection:

(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 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.

16. On page 6, after line 55, to insert the following paragraph:

(g) by the addition of the following subsection:

“(14) Notwithstanding any law to the contrary, no accused shall, for 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.”.

NEW CLAUSE

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

Substitution of section 64 of Act 51 of 1977, as substituted by section 6 of Act 75 of 1995

5. The following section is hereby substituted for section 64 of the principal Act:

“**Proceedings** with regard to bail and conditions to be recorded in full

64. 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, 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.”.

CL.4USE 4

1. On page 8, in line 3, after “may,” to insert “whether the accused has been released or not,”.
2. On page 8, in line 9, after “defeated” to insert “or attempted to defeat”.
3. On page 8, after line 12, to insert the following paragraph:

(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 releases on bail;
4. On page 8, in line 13, to omit “has become available” and to substitute:

has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings,
5. On page 8, in line 15, to omit “public interest” and to substitute “[public interests] interests of @ice”.
6. On page 8, in line 28, after “defeated” to insert “or attempted to defeat”.
7. On page 8, after line 31, to insert the following paragraph:

(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 pervious convictions has come to light after his or her release on bail;
8. On page 8, in line 32, to omit “has become available” and to substitute:

has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings,
9. On page 8, in line 34, to omit “public interest” and to substitute “[public interest] interests of justice”.

NEW CLAUSES

1. That the following be new Clauses to follow Clause 4:

Insertion of section 72A in Act **51** of 1977

5. The following section is hereby inserted in the principal Act after section 72:

“Cancellation of release on warning

72A. 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.”.

Amendment of section 75 of Act 51 of 1977 as amended by section 3 of Act 51 of 1979 and section 9 of Act 33 of 1986

6. Section 75 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The court before whom an accused appears for 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.”.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 4:

Substitution of Schedule 5 to Act 51 of 1977, as added by section 14 of Act 75 of 1995

10. The following Schedule is hereby substituted for Schedule 5 of the principal Act:

“SCHEDULE 5

(Sections 58 and 60(11) and (11A) and Schedule 6)

Treason.

Murder.

Attempted murder involving the infliction of grievous bodily harm.
Rape. ”

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 1000 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, corruption, extortion, fraud, forgery, uttering or theft—

(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 executing 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.
- Indecent assault 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.

CLAUSE 5

1. On page 8, in line 41, to omit “Schedule” and to substitute “Schedules 6 and 7”.
2. On page 8, in line 42, to omit “Schedule” and to substitute “Schedules”.
3. On page 8, from line 43, to omit Schedule 6 and to substitute:

Addition of Schedule 6 to Act 51 of 1977

10. The following Schedules is hereby added to the principal Act:

“SCHEDULE 6

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

Murder. when—

- (u) it was planned or premeditate
- (b) the victim was—
 - (i) a law enforcement officer performing his or her functions as such, whether on duty or not, or an 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 attempted to commit one of the following offences:
 - (i) Rape; 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—

- (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 girl under the age of 16 years;
 - (ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or
 - (iii) is a mentally ill woman as contemplated in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);
- (c) involving the infliction of **grievous** bodily harm.
- Robbery, involving—
- g(a)* the use by the accused or any co-perpetrators or participants of a **fire-arm**;
 - 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.”
- Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.
- 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.

SCHEDULE 7

(Section 60(6)(b))

Public violence.

Culpable homicide.

Bestiality.

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 exceeds R2 000,00 but 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.”.

LONG TITLE

1. On page 2, in the first line, to omit all the words after the second “to” up to and including “bail” in the third line and to substitute:

further regulate the detention of arrested persons; to further regulate the hearing of bail proceedings; to empower an attorney-general or a prosecutor authorised thereto by the attorney-general

concerned to grant bail outside ordinary court hours in respect of certain specified offences; to further regulate the release of an accused on bail who has been convicted of certain serious offences; to further regulate the factors which should be taken into account by a court in considering bail; to empower a court, in respect of certain serious offences, to detain an accused in custody unless the accused satisfies the court that exceptional circumstances exist why he or she should be released; to further define the said serious offences; to empower the attorney-general to issue a written confirmation to the effect that the offence with which the accused is charged is such a serious offence; to place a duty on an accused, or his or her legal adviser, at bail-proceedings, to inform the court whether he or she has previous convictions or whether there are other charges pending against him or her; to further regulate the cancellation of bail and the release of an accused on warning; to regulate the right of access to any information, record or document during bail proceedings