

REPUBLIC OF SOUTH AFRICA

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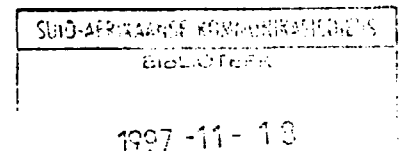
# CRIMINAL PROCEDURE SECOND AMENDMENT BILL

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*(As amended by the Portfolio Committee on Justice (Notional Assembly))*

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(MINISTER OF JUSTICE)



[B 84B—97]

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REPUBLIEK VAN SUID-AFRIKA

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# TWEEDE STRAFPROSES- WYSIGINGSWETSONTWERP

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*(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))*

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(MINISTER VAN JUSTISIE)

[W 84B—97]

ISBN O 621275190

**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 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; and to regulate the right of access to any information, record or document during bail proceedings; and to provide for matters connected therewith.

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**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979, section 37 of Act 122 of 1991 and section 1 of Act 75 of 1995**

1. Section 50 of the Criminal Procedure Act, 1977 (hereinafter referred to as the 5 principal Act). is hereby amended—

(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 the corresponding meaning; and

(b) “ordinary court hours” means the hours from 9:00 until 16:00 on a court day.”;

(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:

(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.”

**Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995**

4. Section 60 of the principal Act is hereby amended—

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

“(b) [If] Subject to the provisions of section 50(6)(b), if a court refers an accused to another court for trial or sentencing, the court referring the accused retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.”;

(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 (1)(a) and (b), require of the prosecutor to place on record the reasons for not opposing the bail application.”;

(c) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person **[or the public interest] or will commit a Schedule 1 offence; or**”;

(d) by the addition to subsection (4) of the following paragraph:

“(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security; or”;

(e) by the insertion after subsection (8) of the following subsection:

“(8A) In considering whether the ground in subsection (4)(e) has been established, the court may, where applicable, take into account the following factors, namely-

- (a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;
- (b) whether the shock or outrage of the community might lead to public disorder if the accused is released;
- (c) whether the safety of the accused might be jeopardized by his or her release;
- (d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;
- (e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or
- (f) any other factor which in the opinion of the court should be taken into account.”;

(f) by the substitution for subsection (11) of the following subsection:

“(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.”;

(g) by the insertion after subsection (11) of the following subsections:

“(11 A) (a) If the attorney-general intends charging any person with an offence referred to in Schedule 5 or 6 the attorney-general may, irrespective of what charge is noted on the charge sheet. at any time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.

(b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.

(c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by an attorney-general under paragraph (a) shall, upon its mere production at such application or proceedings, be prima facie proof of the charge to be brought against that person.

(11 B) (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 or her 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 (u),  
shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”; and 5  
(h) by the addition of the following subsection:

“(14) Notwithstanding any law to the contrary, no accused shall, for the 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.”. 10 15

**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.”. 20 25 30

**Substitution of section 68 of Act 51 of 1977, as substituted by section 10 of Act 75 of 1995** 35

6. The following section is hereby substituted for section 68 of the principal Act:

**“Cancellation of bail**

68. (1) Any court before which a charge is pending in respect of which **[the accused has been released on] bail has been granted** may, whether the accused has been released or not, upon information on oath that— 40  
(a) the accused is about to evade justice or is about to abscond in order to evade justice; [or that]  
(b) the accused [interferes or threatens or attempts] has interfered or threatened or attempted to interfere with witnesses: [or that]  
(c) the accused [defeats] has defeated or attempted to defeat the ends of justice; [or that he or she] 45  
(d) the accused poses a threat to the safety of the public or of a particular person: [or that]  
(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 release on bail; 50

- (f) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or
- (~) it is in the **[public interest] interests of justice to do so**, issue a **warrant for the arrest of the accused and make such order as it may [seem]** deem proper, including an order that the bail be cancelled and that the accused be committed to prison until the conclusion of the relevant criminal proceedings.
- (2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that—
- (a) he or she has reason to believe that—
- (i) an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice; **[or that]**
- (ii) **the accused [interferes or threatens or attempts] has interfered or threatened or attempted** to interfere with witnesses; **[or that]**
- (iii) the accused **[defeats] has defeated or attempted to defeat** the ends of justice; or **[that he or she]**
- (iv) **the accused** poses a threat to the safety of the public or of a particular person; **[or that]**
- (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 previous convictions has come to light after his or her release on bail;
- (c) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to release the accused on bail; or
- (d) it is in the [public interest] interests of justice to do so**, issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison, which committal shall remain of force until the conclusion of the relevant criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.”.

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

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

##### “Cancellation of release on warning

**72A.** Notwithstanding **th 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

8. 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 the 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.”.

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

9. The following Schedule is hereby substituted for Schedule 5 to the principal Act:

“SCHEDULE 5

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

Treason.	5
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—	10
(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 R 10000,00 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	15
(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.	20
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—	25
(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 execution or furtherance of a common purpose or conspiracy; or	30
(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	35
(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—	40
(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.“	

**Addition of Schedules 6 and 7 to Act 51 of 1977**

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

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**“SCHEDULE 6**

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

<b>Murder, when—</b>	
(a) it was planned or premeditated;	5
(b) the victim was—	
(i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position; or	10
(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 having attempted to commit one of the following offences:	15
(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.	20
<b>Rape—</b>	
(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;	25
(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	30
(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;	35
(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);	40
(c) involving the infliction of grievous bodily harm.	
<b>Robbery, involving—</b>	
(a) the use by the accused or any co-perpetrators or participants of a firearm;	
(b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or	45
(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	50
(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.	5
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.	10
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.	15
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 <u>this Schedule</u> .”.	20

**Short title and commencement**

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

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**MEMORANDUM ON THE OBJECTS OF THE CRIMINAL  
PROCEDURE SECOND AMENDMENT BILL**

1. During September 1995 the Criminal Procedure Second Amendment Act, 1995 (Act No. 75 of 1995), introduced various new provisions in respect of bail legislation. The main features of that legislation are to-

- (a) clearly define a court's discretion in respect of bail applications: and
- (b) place an onus on the accused, in respect of the most serious offences, to satisfy the court that the interests of justice do not require his or her detention in custody,

Through those provisions an attempt was made to strike a balance between the personal interests of the accused on the one hand and the interests of society and the administration of justice as a whole on the other.

2. Although the present bail system works reasonably well and a balance is struck between the interests of the offenders and those of the victims and society as a whole, there is still vehement criticism against the bail system. There is a perception, as well as indications, that persons who have committed serious offences are released on bail too easily, or that persons who are released on bail commit serious offences whilst on bail. There are also allegations that police officials, prosecutors and magistrates are not properly trained or that they do not show the necessary understanding during the consideration of bail applications.

3. The proper training of police officials and court officials is of the utmost importance and this matter is receiving urgent attention in the business plans of the National Crime Prevention Strategy. The Bill seeks to deal with the criticisms against the bail legislation. The Bill also seeks to bring to the fore the Legislature's serious desire to combat crime and to ensure that the prosecuting authority and presiding officers are aware of it.

4. The following amendments are proposed:

4.1 In clause 2(a) an amendment of section 50(6) of the Criminal Procedure Act, 1977 (Act 51 of 1977) ("the Act"), is proposed.

4.1.1 In the proposed subsection (6)(a) provision is made that bail applications may only be heard during court hours. According to comments received from prosecutors and magistrates, bail applications outside ordinary court hours cause various problems. The proper constitution of a court is often difficult due to the non-availability of either the investigating officer or an interpreter. This makes the proper weighing up of interests very difficult. Furthermore, the rights of the public, and in particular the rights of victims, are almost always not given due recognition, either because they are not aware of the bail application or because the application is heard when it is impossible to attend the proceedings, for example at midnight. There is therefore often a lack of transparency during bail applications outside ordinary court hours leading to the representation of a one-sided version, often favouring the accused. In addition thereto court officials are not always in a position to give proper attention to applications as a result of the unusual hours.

4.1.2 In terms of the proposed subsection (6)(b) bail applications in respect of the offences listed in Schedule 5 or 6 (the most serious offences), will only be heard by a regional court, unless such court is not available. This will ensure that bail applications in respect of the more serious offences are dealt with by experienced prosecutors and presiding officers. If therefore, a suspect appears in a magistrates' court and the offence with which he or she is charged is an offence listed in Schedule 5 or 6, the prosecutor may request the court to postpone the bail application so that a competent court can hear the bail application (see the proposed section 50(6) (c)(iii)).

4.2 Clause 3 proposes an amendment of section 60 of the Act. A new paragraph (aA) is inserted in subsection (4) in terms of which the refusal to grant bail will be in the interests of justice where there is a likelihood that the release of the accused will disturb the public order or undermine public peace or security, A new subsection (5A) is inserted which sets out the factors which the court may take into account in considering the criteria inserted by paragraph (aA). The following factors may be taken into account:

- \* The fact that the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed.

- \* The fact that the safety of the accused might be jeopardized by his or her release.
- \* The fact that the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused.
- \* The fact that the release of the accused will undermine or jeopardize the legitimacy or efficiency of the criminal justice system.

4.3 Clause 3 also proposes the substitution of section 60(11) of the Act and the insertion of a new section **60(11 A)** in the Act.

4.3.1 The new subsection (11) contains the following proposals:

- (a) A court is empowered to order that an accused charged with any offence listed in Schedule 6 be detained in custody unless the accused satisfies the court that exceptional circumstances exist which justify his or her release. The offences listed in Schedule 6 are the most serious violent crimes, namely murder, rape and robbery. The crimes of murder and robbery are, however, qualified in order to indicate clearly that the limitation placed on the rights of the accused will only apply in the most extreme circumstances, namely in the case of—
- \* premeditated murder;
  - \* the murder of a law enforcement officer acting in the course of his or her duties;
  - \* murder, where the death of the victim was caused by the accused while committing another serious crime;
  - \* murder where a fire-arm was used, whether or not such fire-arm caused the death of the victim;
  - \* robbery, involving the use of a fire-arm, the infliction of bodily harm or the taking of a motor vehicle or an attempt to do so.
- (b) Where an accused is charged with an offence referred to in Schedule 5 and it is proved that—
- (i) the accused has previously been convicted of an offence referred to in Schedule 5 or 6; or
  - (ii) the offence was allegedly committed whilst he or she was released on bail in respect of a Schedule 5 or 6 offence,
- the court must detain the accused in custody, unless the accused satisfies the court that exceptional circumstances exist which justify his or her release.

4.3.2 The new section 60( 11A) empowers an attorney-general to issue a written confirmation to the effect that he or she intends to charge the accused with an offence listed in Schedule 5 or 6. The written confirmation may be handed in at the court and upon its mere production will be *prima facie* proof of the charge against the accused. In terms of the proposed section 50(6) (c)(ii) prosecutor may request the court to postpone the bail application in order to obtain such a written confirmation.

4.4 Clause 4 seeks to amend section 68 of the Act in order that an accused who has been released on bail may be arrested if further evidence indicates that the accused should not have been so released. The accused may then be brought before the court in order to reconsider the bail application and the court may order the detention of such an accused if the interests of justice so require.

5. In respect of most of the amendments the Minister of Justice has held personal discussions with the main spokespersons of the different political parties. The proposals were also distributed among representatives of the provinces and during a meeting of the Select Committee on Security and Justice (National Council of Provinces) the proposals were discussed comprehensively. In meetings between the Minister and the President of the Constitutional Court, the Chief Justice, judges president and attorneys-general the proposed amendments were also brought to their attention. The Bill was also distributed for comment among the regional representatives in the Department of Justice, the attorneys-general, regional court presidents, magistrates and prosecutors.

In the opinion of the Department and the State Law Advisers this Bill must be dealt with in terms of section 75 of the Constitution.