

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

STAATSKOERANT

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

Selling price • Verkoopprijs  
(GST excluded/AVB uitgesluit)  
Local **70c** Plaaslik  
Other countries R1,00 Buitelands  
Post free • Posvry

Vol. 309

CAPE TOWN, 28 MARCH 1991

No. 13110

KAAPSTAD, 28 MAART 1991

STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 658.

28 March 1991

No. 658.

28 Maart 1991

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 5 of 1991: Criminal Procedure Amendment Act, 1991.

No. 5 van 1991: Strafproseswysigingswet, 1991.

Act No. 5, 1991

CRIMINAL PROCEDURE AMENDMENT ACT, 1991

## GENERAL EXPLANATORY NOTE:

**[**                    **]** Words in bold type in square brackets indicate omissions from existing enactments.

                     Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Criminal Procedure Act, 1977, so as to emend certain definitions; to further regulate certain matters regarding the forfeiture of articles; to authorize the Minister of Justice to adjust from time to time by notice in the *Gazette* the monetary limit in respect of the maximum admission of guilt fine which may be paid in terms of a written notice or a summons, the maximum fine which may be imposed upon an accused after a conviction pursuant to a plea of guilty only, the compensation which may be awarded by a lower court to any person who has suffered damage as a result of an offence tried by that court, and the fine which may be imposed in a lower court and which is in the ordinary course of events subject to review by a judge having jurisdiction; to provide that a prosecution will in certain circumstances proceed with the charge initially laid against the accused; to provide for the issuing by the court of an order for the further detention of an accused who, on account of any physical indisposition, cannot appear before the court; to provide that a person who is likely to give information as to an alleged offence does not have to appear before a magistrate in certain circumstances for questioning; to further regulate the proof of certain facts with regard to precious metals or precious stones; to provide that certain convictions shall fall away after a lapse of 10 years; and to extend the antedating of sentences of imprisonment to include cases where a sentence of death is set aside and substituted by imprisonment; and to provide for incidental matters.

*(English text signed by the State President.)*  
*(Assented to 15 March 1991.)*

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

## Amendment of section 1 of Act 51 of 1977

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

- (a) by the substitution for the definition of “bank” of the following definition: 5  
 “‘bank’ means a banking institution as defined in section 1 of the Banks Act, 1965 (Act 23 of 1965), and includes the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act 13 of 1944), **[and]** a mutual building society as defined in 10  
 section 1 of the Mutual Building Societies Act, 1965 (Act 24 of 1965),  
and a building society as defined in section 1 of the Building Societies Act, 1986 (Act 82 of 1986);”;
- (b) by the substitution for the definition of “police official” of the following definition: 15

## Act No. 5, 1991

## CRIMINAL PROCEDURE AMENDMENT ACT, 1991

“‘police official’ means any member of the Force as defined in section 1 of the Police Act, 1958 (Act 7 of 1958), **[and any member of the Railway Police Force appointed under section 57 (1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act 70 of 1957)]** and ‘police’ has a corresponding meaning;” 5

(c) by the substitution for the definition of “rules of court” of the following definition:

“‘rules of court’ means the rules made under section 43 of the Supreme Court Act, 1959 (Act 59 of 1959), or under section **[25 of the Magistrates’ Courts Act, 1944 (Act 32 of 1944)]** 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985);” 10

**Amendment of section 31 of Act 51 of 1977**

2. Section 31 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) If no person may lawfully possess such article or if the police official **[concerned]** charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.” 15

**Amendment of section 32 of Act 51 of 1977**

3. Section 32 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 20

“(2) If no person may lawfully possess such article or if the police official **[concerned]** charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.” 25

**Amendment of section 33 of Act 51 of 1977**

4. Section 33 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) If criminal proceedings are instituted in connection with any article referred to in section 30 (c) and such article is required at the trial for the purposes of evidence or for the purposes of an order of court, the police official **[concerned]** charged with the investigation shall, subject to the provisions of subsection (2) of this section, deliver such article to the clerk of the court where such criminal proceedings are instituted. 30

(2) If it is by reason of the nature, bulk or value of the article in question impracticable or undesirable that the article should be delivered to the clerk of the court in terms of subsection (1), the clerk of the court may require the police official **[concerned]** in charge of the investigation to retain the article in police custody or in such other custody as may be determined in terms of section 30 (c).” 40

**Amendment of section 56 of Act 51 of 1977, as amended by section 2 of Act 109 of 1984**

5. Section 56 of the principal Act is hereby amended by the substitution in section (1) for the words preceding paragraph (a) of the following words:

“If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate’s court, on convicting such accused of that offence, will not impose a fine exceeding **[R300]** the amount determined by the Minister from time to time by notice in the Gazette, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall—” 45

Act No. 5, 1991

CRIMINAL PROCEDURE AMENDMENT ACT, 1991

**Amendment of section 57 of Act 51 of 1977, as amended by section 3 of Act 109 of 1984, section 6 of Act 33 of 1986 and section 2 of Act 26 of 1987**

6. Section 57 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph: 5
- “(a) a summons is issued against an accused under section 54 (in this section referred to as the summons) and the public prosecutor or the clerk of the court concerned on reasonable grounds believes that a magistrate’s court, on convicting the accused of the offence in question, will not impose a fine exceeding **[R300]** the amount determined by the Minister from time to time by notice in the *Gazette*, and such public prosecutor or clerk of the court endorses the summons to the effect that the accused may admit his guilt in respect of the offence in question and that he may pay a fine stipulated on the summons in respect of such offence without appearing in court; or”; and 10 15
- (b) by the substitution for paragraph (b) of subsection (5) of the following paragraph:
- “(b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount **[of R300]** determined by the Minister from time to time by notice in the *Gazette*, whichever is the lesser.” 20

**Amendment of section 112 of Act 51 of 1977, as amended by section 4 of Act 109 of 1984**

7. Section 112 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively: 25

- “(a) the presiding judge may, if he is of the opinion that the offence does not merit the sentence of death, or the presiding judge, regional magistrate or magistrate may, if he is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a whipping or of a fine exceeding **[R300]** the amount determined by the Minister from time to time by notice in the *Gazette*, convict the accused in respect of the offence to which he has pleaded guilty on his plea of guilty only and— 30
- (i) impose any competent sentence, other than the sentence of death or imprisonment or any other form of detention without the option of a fine or a whipping or a fine exceeding **[R300]** the amount determined by the Minister from time to time by notice in the *Gazette*; or 35
- (ii) deal with the accused otherwise in accordance with law;
- (b) the presiding judge shall, if he is of the opinion that the offence merits the sentence of death, or the presiding judge, regional magistrate or magistrate shall, if he is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a whipping or of a fine exceeding **[R300]** the amount determined by the Minister from time to time by notice in the *Gazette*, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he admits the allegations in the charge to which he has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he has pleaded guilty, convict the accused on his plea of guilty of that offence and impose any competent sentence: 45
- Provided that the sentence of death shall not be imposed unless the guilt of the accused has been proved as if he had pleaded not guilty.” 50

**Amendment of section 113 of Act 51 of 1977**

8. Section 113 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

## Act No. 5, 1991

## CRIMINAL PROCEDURE AMENDMENT ACT, 1991

“(2) If the court records a plea of not guilty under subsection (1) before any evidence has been led, the prosecution shall proceed on the original charge laid against the accused, unless the prosecutor explicitly indicates otherwise.”.

**Amendment of section 159 of Act 51 of 1977**

9. Section 159 of the principal Act is hereby amended by the addition of the following subsection: 5

“(4) If an accused who is in custody in terms of an order of court cannot, by reason of his physical indisposition or other physical condition, be brought before a court for the purposes of obtaining an order for his further detention, the court before which the accused would have been brought for purposes of such an order if it were not for the indisposition or other condition, may, upon application made by the prosecution at any time prior to the expiry of the order for his detention wherein the circumstances surrounding the indisposition or other condition are set out, supported by a certificate from a medical practitioner, order, in the absence of such an accused, that he be detained at a place indicated by the court and for the period which the court deems necessary in order that he can recover and be brought before the court so that an order for his further detention for the purposes of his trial can be obtained.”. 10 15

**Amendment of section 205 of Act 51 of 1977**

10. Section 205 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) A magistrate may, upon the request of [a public prosecutor] an attorney-general, require the attendance before him or any other magistrate, for examination by the attorney-general or a public prosecutor authorized thereto by the attorney-general, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed: Provided that if such person furnishes that information to the satisfaction of the attorney-general or public prosecutor concerned, prior to the date on which he was required to appear before such magistrate, he shall be under no further obligation to appear before a magistrate.”. 25 30

**Amendment of section 212 of Act 51 of 1977, as amended by section 12 of Act 56 of 1979 and sections 46 and 47 of Act 97 of 1986**

11. Section 212 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Whenever the [mass or value of precious metal] question as to the existence and nature of a precious metal or any precious stone is or may become relevant to the issue in criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is an appraiser of precious metals or precious stones, that he is in the service of the State, that such precious metal or such precious stone is indeed a precious metal or a precious stone, as the case may be, that it is a precious metal or a precious stone of a particular kind and appearance and that the mass or value of such precious metal or such precious stone is as specified in that affidavit, shall, upon its mere production at such proceedings, be prima facie proof that it is a precious metal or a precious stone of a particular kind and appearance and the mass or value of such precious metal or such precious stone is as so specified.”. 35 40 45

Act No. 5, 1991

CRIMINAL PROCEDURE AMENDMENT ACT, 1991

**Insertion of section 271A in Act 51 of 1977**

12. The following section is hereby inserted after section 271 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— 5  
 (a) an offence specified in Schedule 1, and—  
 (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 10  
 (ii) has discharged that person with a caution or reprimand in terms of section 297 (1) (c); or  
 (b) any other offence than that referred to in Schedule 1, 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 such person has been convicted of an offence specified in Schedule 1.”. 15

**Substitution of section 282 of Act 51 of 1977**

13. The following section is hereby substituted for section 282 of the principal Act:

**“Antedating sentence of imprisonment** 20

**282.** Whenever—  
 (a) a sentence of death; or  
 (b) any sentence of imprisonment, imposed on any person on conviction for an offence is set aside on appeal or review and any sentence of imprisonment or other sentence of imprisonment is thereafter imposed on such person in respect of such offence in place of the sentences referred to in paragraph (a) or (b), respectively, the [latter] sentence which was later imposed may, if the court imposing it is satisfied that the person concerned has spent a period of time in prison awaiting the execution of the sentence referred to in paragraph (a) or has served any part of the [first-mentioned] sentence referred to in paragraph (b), be antedated by the court to a specified date, which shall not be earlier than the date on which [such first-mentioned sentence was] the sentences referred to in paragraphs (a) and (b) were imposed, and thereupon [such latter] the sentence which was later imposed shall be deemed to have been imposed on the date so specified.”. 25 30 35

**Amendment of section 300 of Act 51 of 1977, as amended by section 16 of Act 56 of 1979, section 7 of Act 109 of 1984 and section 12 of Act 26 of 1987**

14. Section 300 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 40

“(a) a regional court or a magistrate’s court shall not make any such award if the compensation applied for exceeds [R20 000 or R5 000, respectively] the amount determined by the Minister from time to time by notice in the *Gazette* in respect of the respective courts.”. 45

**Amendment of section 302 of Act 51 of 1977, as amended by section 11 of Act 105 of 1982, section 22 of Act 59 of 1983, section 8 of Act 109 of 1984 and section 13 of Act 26 of 1987**

15. Section 302 of the principal Act is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph: 50

“(ii) which, in the case of a fine, exceeds the amount [of R500, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds the amount of R1 000, if imposed by a judicial officer who has held the substantive rank of magistrate

Act No. 5, 1991

CRIMINAL PROCEDURE AMENDMENT ACT, 1991

or higher for a period of seven years or longer] determined by the Minister from time to time by notice in the *Gazette* for the respective judicial officers referred to in subparagraph (i);”.

**Short title and commencement**

16. (1) This Act shall be called the Criminal Procedure Amendment Act, 1991, and shall come into operation on a date determined by the State President by proclamation in the *Gazette*. 5

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