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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1395.

24 June 1987

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

— .26 of 1987: Criminal Procedure Amendment Act, 1987.

No. 1395.

24 Junie 1987

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

No. 26 van 1987: Strafproseswysigingswet, 1987.

Act No. 26, 1987

CRIMINAL PROCEDURE AMENDMENT ACT, 1987

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 replace certain obsolete references to laws and to delete certain obsolete provisions; to make further provision for the acceptance of an admission of guilt fine where the summons or written notice is lost; to further regulate the issuing of a direction by the Minister of Justice to transfer criminal proceedings from the area of jurisdiction of one attorney-general to that of another; to further regulate the duration of orders which may be issued in respect of convicted juveniles; to make compulsory the hearing of a report of a probation officer by a court before a person is committed to a rehabilitation centre; to amend the Afrikaans text of section 309A; to further regulate the consideration of a petition for leave to appeal; to extend the definition of "local authority"; and to insert certain offences in Schedule 1 to the said Act; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 16 June 1987.)

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

Amendment of
section 15 of
Act 51 of 1977.

1. Section 15 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding the proviso of the following words:

"The court may order a person convicted upon a private prosecution **[, including any person convicted under section 25 (1) of the Children's Act, 1960 (Act 33 of 1960), of having conducted to the commission of an offence,]** to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence."

Amendment of
section 57 of
Act 51 of 1977,
as amended by
section 3 of
Act 109 of 1984
and section 6 of
Act 33 of 1986.

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

(a) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) (i) Subject to the provisions of subparagraphs (ii) and (iii), an accused who intends to pay an admission of guilt fine in terms of subsection (1), shall surrender the summons or the written notice, as the case may be, at the time of the payment of the fine.

(ii) If the summons or written notice, as the case may be, is lost or is not available and the copy thereof known as the control document—

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(aa) is not available at the place of payment referred to in subsection (1), the accused shall surrender a copy of the summons or written notice, as the case may be, at the time of the payment of the fine; or

(bb) is available at the place of payment referred to in subsection (1), the admission of guilt fine may be accepted without the surrender of a copy of the summons or written notice, as the case may be.

(iii) If an accused in respect of whom a warrant has been endorsed in terms of section 55 (2A) intends to pay the relevant admission of guilt fine, the clerk of the court may, after he has satisfied himself that the warrant is so endorsed, accept the admission of guilt fine without the surrender of the summons, written notice or copy thereof, as the case may be; and

(b) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) Notwithstanding the provisions of subsection (1), an accused referred to in paragraph (a) (iii) may pay the admission of guilt fine in question to the clerk of the court where he appears in consequence of such warrant, and if the said clerk of the court is not the clerk of the magistrate’s court referred to in subsection (1), he shall transfer such admission of guilt fine to the latter clerk of the magistrate’s court.”.

Amendment of
section 59 of
Act 51 of 1977.

3. Section 59 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) An accused who is in custody in respect of any offence, other than an offence referred to in Part II or Part III of Schedule 2, or in [the] Schedule 3 to the Internal Security Act, [1950 (Act 44 of 1950)] 1982 (Act 74 of 1982), may, before his first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, if the accused deposits at a police station the sum of money determined by such police official.”.

Substitution of
section 71 of
Act 51 of 1977.

4. The following section is hereby substituted for section 71 of the principal Act:

“Juvenile may be placed in place of safety in lieu of release on bail or detention in custody.”

71. If an accused under the age of eighteen years is in custody in respect of any offence, and a police official or a court may in respect of such offence release the accused on bail under section 59 or 60, as the case may be, such police official or court may, instead of releasing the accused on bail or detaining him in custody, place the accused in a place of safety as defined in section 1 of the [Children’s Act, 1960 (Act 33 of 1960)] Child Care Act, 1983 (Act 74 of 1983), pending his appearance or further appearance before a court in respect of the offence in question or until he is otherwise dealt with in accordance with law.”.

Amendment of
section 72 of
Act 51 of 1977,
as amended by
section 7 of
Act 33 of 1986.

5. Section 72 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“If an accused is in custody in respect of any offence and a police official or a court may in respect of such offence re-

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lease the accused on bail under section 59 or 60, as the case may be, such police official or such court, as the case may be, may, in lieu of bail and if the offence is not, in the case of such police official, an offence referred to in Part II or Part III of Schedule 2 or in [the] Schedule 3 to the Internal Security Act, [1950 (Act 44 of 1950)] 1982 (Act 74 of 1982) [, or, in the case of such court, an offence referred to in the Schedule to the said Internal Security Act, 1950]—”.

Amendment of
section 111 of
Act 51 of 1977.

6. Section 111 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following 10 subsection:

“(1) Where the Minister deems it in the interests of the administration of justice that an offence committed within the area of jurisdiction of one attorney-general be tried within the area of jurisdiction of another attorney-general, he may in writing direct that criminal proceedings in respect of such offence be commenced [in a court at a place] within the area of jurisdiction of such other attorney-general.”;

(b) by the substitution for paragraph (a) of subsection (2) 20 of the following paragraph:

“(a) The direction of the Minister shall [set out] state the name of the accused, the relevant offence, the place at which (if known) and the [provincial division] attorney-general in [which] whose area of jurisdiction the offence was committed, and the [place at which] attorney-general in whose area of jurisdiction the relevant criminal proceedings shall commence [and the provincial division in which such place is situated].”; and 30

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

“(a) [where the accused is not in custody,] cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time 35 and a date and to the court [in which the accused is to appear in accordance with the said direction] designated by the attorney-general in whose area of jurisdiction the said criminal proceedings shall commence, whereupon such time and date and 40 court shall be deemed to be the time and date and [place] court appointed for the trial of the accused or to which the proceedings pending against the accused are adjourned;”.

Amendment of
section 195 of
Act 51 of 1977,
as amended by
section 5 of
Act 72 of 1985.

7. Section 195 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) any offence under Chapter [III] 8 of the [Children’s Act, 1960 (Act 33 of 1960)] Child Care Act, 1983 (Act 74 of 1983), committed in respect of any child of either 50 of them;”.

Amendment of
section 254 of
Act 51 of 1977.

8. Section 254 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If it appears to the court at the trial upon any charge of any accused under the age of eighteen years that he is a 55 child [in need of care] as [defined] referred to in section [1] 14 (4) of the [Children’s Act, 1960 (Act 33 of 1960)] Child Care Act, 1983 (Act 74 of 1983), and that it is desirable to deal with him in terms of sections [30 and 31] 13, 14 and 15 of that Act, it may stop the trial and order that the accused 60

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be brought before a children's court mentioned in section [4 or] 5 of that Act and that he be dealt with under the said sections [30 and 31] 13, 14 and 15."

Amendment of
section 290 of
Act 51 of 1977.

9. Section 290 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (d) of subsection (1) 5
of the following paragraph:

"(d) order that he be sent to a reform school as defined in section 1 of the [Children's Act, 1960 (Act 33 of 1960)] Child Care Act, 1983 (Act 74 of 1983).";

- (b) by the substitution for the words following on para- 10
graph (b) of subsection (3) of the following words:

"may, instead of imposing punishment upon him for that offence, order that he be placed under the supervision of a probation officer or that he be sent to a reform school as defined in section 1 of 15
the [Children's Act, 1960] Child Care Act, 1983."; and

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

"(4) A court which in terms of this section orders 20
that any person be sent to a reform school, may direct that such person be kept in a [place of detention or a] place of safety as defined in section 1 of the [Children's Act, 1960] Child Care Act, 1983, until such time as the order can be put into effect [; Provided that any such 25
person kept in a place of safety shall be transferred to a place of detention when it appears that the order in question cannot within three weeks be put into effect].".

Substitution of
section 291 of
Act 51 of 1977.

10. The following section is hereby substituted for section 291 30
of the principal Act:

"Duration of
orders under
section 290.

291. (1) Subject to the provisions of this section, any order made under section 290 shall lapse after the expiration of a period of two years after the date on which the order was made or after the expiration of such shorter period as the court may have determined at the time of making that order or, if the person concerned is discharged in accordance with the provisions of the Child Care Act, 1983 (Act 74 of 1983), at the time of such discharge. 35

(2) Subject to the provisions of subsection (3), the Minister to whom the administration of the provisions of the said Child Care Act, 1983, has been assigned or any person acting under his authority, may extend the validity of an order referred to in subsection (1) for a further period not exceeding two years 40
at a time: Provided that an order may not be so extended to a date after the date on which the person attains the age of 18 years. 45

(3) The said Minister or any person acting under his authority, may, if he deems it necessary, order 50
that any former pupil of or pupil in a reform school whose period of detention has expired or is about to expire, shall return to or remain in that reform school for a further period not exceeding two years and may from time to time by further order extend 55
that period: Provided that no such order or extension shall extend the period of detention of any person beyond the end of the year in which that person attains the age of 21 years."

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Amendment of section 296 of Act 51 of 1977, as amended by section 15 of Act 56 of 1979 and section 7 of Act 64 of 1982.

11. Section 296 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

"A court convicting any person of any offence may, in addition to or in lieu of any sentence in respect of such offence, order that the person be detained at a rehabilitation centre established under the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act 41 of 1971), if the court is satisfied from the evidence or from any other information placed before it, which shall in either of the said cases include the report of a probation officer, that such person is a person as is described in section 29 (1) of the said Act, and such order shall for the purposes of the said Act be deemed to have been made under section 30 thereof."

Amendment of section 300 of Act 51 of 1977, as amended by section 16 of Act 56 of 1979 and section 7 of Act 109 of 1984.

12. Section 300 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (1).

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 and section 8 of Act 109 of 1984.

13. Section 302 of the principal Act is hereby amended—

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

"(i) which, in the case of imprisonment (including detention in a reform school as defined in section 1 of the [Children's Act, 1960 (Act 33 of 1960)] Child Care Act, 1983 (Act 74 of 1983)), exceeds a period of three months, 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 a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;" and

(b) by the deletion of paragraph (b) of subsection (3).

Amendment of section 309A of Act 51 of 1977, as inserted by item L of the Schedule to Act 34 of 1986.

14. Section 309A of the principal Act is hereby amended by the substitution in the Afrikaans text for the second subparagraph (iii) of paragraph (a) of subsection (1) of the following subparagraph:

"(iv) die vonnis wat deur die kaptein, hoofman of gevolmagtigde van 'n kaptein opgelê is, tersyde stel en in plaas daarvan 'n vonnis opelê van gevangenisstraf vir 'n tydperk van hoogstens drie maande sonder die keuse van 'n boete;"

Amendment of section 316 of Act 51 of 1977, as amended by section 21 of Act 105 of 1982.

15. Section 316 of the principal Act is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

"(7) (a) The petition shall be considered in chambers by ~~[three]~~ two judges of the Appellate Division designated by the Chief Justice.

(b) If the judges differ in opinion, the petition shall also be considered in chambers by the Chief Justice or by any other judge of the Appellate Division to whom it has been referred by the Chief Justice."; and

(b) by the substitution for paragraph (b) of subsection (9) of the following paragraph:

"(b) For the purposes of [this section] subsection (7) any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three."

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Amendment of
section 341 of
Act 51 of 1977,
as amended by
section 9 of
Act 64 of 1982
and section 25 of
Act 33 of 1986.

16. Section 341 of the principal Act is hereby amended by the substitution for paragraph (e) of subsection (2) of the following paragraph:

- “(e) For the purposes of this subsection ‘local authority’ means any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961), and includes—
- (i) a regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985);
 - (ii) any institution or body established under the Rural Coloured Areas Law, 1979 (Law 1 of 1979), of the Coloured Persons Representative Council of the Republic of South Africa;
 - (iii) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act 102 of 1982);
 - (iv) a local government body contemplated in section 30 (2) (a) of the Black Administration Act, 1927 (Act 38 of 1927); and
 - (v) any committee referred to in section 17 (1) of the Promotion of Local Government Affairs Act, 1983 (Act 91 of 1983).”.

Amendment of
Schedule 1 to
Act 51 of 1977.

17. The following Schedule is hereby substituted for Schedule 1 to the principal Act:

“Schedule 1
(Sections 40, 42, 49)

- Treason.
- Sedition.
- Public violence.
- Murder.
- Culpable homicide.
- Rape.
- Indecent assault.
- Sodomy.
- Bestiality.
- Robbery.
- Kidnapping.
- Childstealing.
- Assault, when a dangerous wound is inflicted.
- Arson.
- Malicious injury to property.
- Breaking or entering any premises, whether under the common law or a statutory provision, with intent to commit an offence.
- Theft, whether under the common law or a statutory provision.
- Receiving stolen property knowing it to have been stolen.
- Fraud.
- Forgery or uttering a forged document knowing it to have been forged.
- Offences relating to the coinage.
- Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.
- Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.
- Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.”.

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Short title
and commence-
ment.

18. (1) This Act shall be called the Criminal Procedure Amendment Act, 1987.

(2) Sections 1, 4, 7 to 10, 12 and 13 (a) shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(3) Different dates may be fixed in terms of subsection (2) in respect of the said provisions.

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