



# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 630.

4 April 1986

No. 630.

4 April 1986

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

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

No. 33 van 1986: Strafproseswysigingswet, 1986.

No. 33 of 1986: Criminal Procedure Amendment Act, 1986.

**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 provide that the person making an arrest may place in safe custody any dangerous object found on the person arrested; to increase the maximum fines which may be imposed for certain offences; to provide for the acceptance of admission of guilt where the summons or written notice is lost or where the accused is in custody; to further regulate the release of an accused on warning; to provide that a person authorized thereby by the attorney-general may also designate the court for a summary trial; to provide for the setting aside of the conviction by a court that finds that the accused is not capable of making a proper defence, or was by reason of mental illness or mental defect not criminally responsible; to make further provision for the service of a written notice on a person on whom periodical imprisonment was imposed; to further regulate the imposition of a whipping and a moderate correction of a whipping; to make further provision in connection with the performance of community service as a condition of the postponement of sentence or the suspension of sentence; to provide for the liability of the State for patrimonial loss arising from the performance of community service; to provide for the review of proceedings before sentence; to provide that any person who has been sentenced to a whipping may be released on warning pending the review of the proceedings; and to extend the definition of "local authority" for certain purposes so as to include a divisional council and a regional services council; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)*  
*(Assented to 25 March 1986.)*

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

1. Section 23 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

10 "(2) On the arrest of any person, the person making the arrest may place in safe custody any object found on the person arrested and which may be used to cause bodily harm to himself or others."

2. Section 28 of the principal Act is hereby amended by the substitution in subsection (1) for the words following upon subparagraph (ii) of paragraph (b) of the following words:

Amendment of section 23 of Act 51 of 1977.

Amendment of section 28 of Act 51 of 1977.

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“shall be guilty of an offence and liable on conviction to a fine not exceeding **[two hundred rand] R600** or to imprisonment for a period not exceeding six months, and shall in addition be subject to an award under subsection (2).”.

- 5 3. Section 41 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 41 of Act 51 of 1977.

10 “(2) Any person who, when called upon under the provisions of subsection (1) to furnish his name and address, fails to do so or furnishes a false or incorrect name and address, shall be guilty of an offence and liable on conviction to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”.

- 15 4. Section 47 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 47 of Act 51 of 1977.

“**(2)** Any person who, without sufficient cause, fails to assist a police official as provided in subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”.

- 20 5. Section 55 of the principal Act is hereby amended— Amendment of section 55 of Act 51 of 1977, as amended by section 14 of Act 59 of 1983.

(a) by the substitution in subsection (2) for the words preceding the proviso of the following words:

25 “(2) The court may, if satisfied from the return of service referred to in paragraph (b) of section 54 (2) that the summons was served on the accused in terms of paragraph (a) of that section and that the accused has failed to appear at the place and on the date and at the time specified in the summons, or if satisfied that the accused has failed to remain in attendance at the proceedings in question, issue a warrant for his arrest and, when he is brought before the court, in a summary manner enquire into his failure so to appear or so to remain in attendance and unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”;

40 (b) by the insertion after subsection (2) of the following subsection:

45 “**(2A)** If the court issues a warrant of arrest in terms of subsection (2) in respect of a summons which is endorsed in accordance with section 57 (1) (a), an endorsement to the same effect shall be made on the warrant in question.”; and

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

50 “(a) If, in any case in which a warrant of arrest is issued, it was permissible for the accused in terms of section 57 to admit his guilt in respect of the summons on which he failed to appear and to pay a fine in respect thereof without appearing in court, and the accused is arrested under such warrant in the area of jurisdiction of a magistrate’s court other than the magistrate’s court which issued the warrant of arrest, such other magistrate’s court may, notwithstanding any provision of this Act or

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any other law to the contrary, and if satisfied that the accused has, since the date on which he failed to appear on the summons in question, admitted his guilt in respect of that summons and has paid a fine in respect thereof without appearing in court, in a summary manner enquire into his failure to appear on such summons and, unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”.

6. Section 57 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

Amendment of section 57 of Act 51 of 1977, as amended by section 3 of Act 109 of 1984.

“(3) (a) An admission of guilt fine shall not be accepted in terms of subsection (1) unless —

(i) the accused surrenders the summons or written notice in question;

(ii) where such summons or notice is lost or not available and payment takes place at a police station or local authority, the accused surrenders a copy of such summons or written notice;

(iii) where the accused is in custody under a warrant endorsed in terms of section 55 (2A), the clerk of the court is satisfied that the summons is so endorsed.

(b) A copy referred to in paragraph (a) (ii) may be obtained by the accused at the magistrate’s court, police station or local authority where the copy of the summons or written notice in question known as the control document is filed.

(c) Notwithstanding the provisions of subsection (1) an accused who has been arrested under a warrant 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 his arrest.”.

7. Section 72 of the principal Act is hereby amended —

Amendment of section 72 of Act 51 of 1977.

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

“(a) release the accused from custody and warn him to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and the said court may, at the time of such release or at any time thereafter, impose any condition referred to in section 62 in connection with such release;”;

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

“(b) in the case of an accused under the age of eighteen years who is released under paragraph (a), place the accused in the care of the person in whose custody he is, and warn such person to bring the accused or cause the accused to be brought before a specified court at a specified time on a specified date and to have the accused remain in attendance at the proceedings relating to the offence in question and, if a condition has been imposed in terms of paragraph (a), to see to it that the accused complies with that condition.”;

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

5 “(2) (a) An accused who is released under subsection (1) (a) and who fails to appear or, as the case may be, to remain in attendance at the proceedings in accordance with a warning under that paragraph, or who fails to comply with a condition imposed under subsection (1) (a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).

10 (b) Any person in whose custody an accused is placed under subsection (1) (b) and who fails in terms of a warning under that subsection to bring the accused before court or to have the accused remain in attendance, or who fails to see to it that the accused complies with a condition referred to in subsection (1) (a), shall be guilty of an offence and liable to the punishment prescribed under subsection (4).”;

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

25 “(b) A court which releases an accused under subsection (1) shall, at the time of releasing the accused, record or cause the relevant 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 warning relating to the court before which, the time at which and the date on which the accused is to appear or the conditions on which he was released, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such warning.”; and

35 (e) by the substitution for subsection (4) of the following subsection:

40 “(4) The court may, if satisfied that an accused referred to in subsection (2) (a) or a person referred to in subsection (2) (b), was duly warned in terms of paragraph (a) or, as the case may be, paragraph (b) of subsection (1), and that such accused or such person has failed to comply with such warning or to comply with a condition imposed, issue a warrant for his arrest, and may, when he is brought before the court, in a summary manner enquire into his failure **[to comply with the warning]** and, unless such accused or such person satisfies the court that his failure was not due to fault on his part, sentence him to a fine not exceeding **[one hundred rand]** R300 or to imprisonment for a period not exceeding three months.”.

8. Section 74 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection: Amendment of section 74 of Act 51 of 1977.

55 “(7) The court, if satisfied from evidence placed before it that a parent or guardian has been warned to attend the proceedings in question and that such parent or guardian has failed to attend such proceedings, or that a parent or guardian has failed to remain in attendance at such proceedings, may issue a warrant for the arrest of such parent or guardian and, when he is brought before the court, in a summary manner enquire into his failure to attend or to remain in attendance, and, unless such parent or guardian satisfies the court that his failure was not due to fault on his

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part, sentence him to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”.

9. Section 75 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

Amendment of section 75 of Act 51 of 1977, as substituted by section 3 of Act 56 of 1979.

“(c) any other court which has jurisdiction and which has been designated by the attorney-general or any person authorized thereto by the attorney-general, whether in general or in any particular case, for the purposes of such summary trial.”.

10. Section 77 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

Amendment of section 77 of Act 51 of 1977.

“(6) (a) If the court finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court shall direct that the accused be detained in a mental hospital or a prison pending the signification of the decision of the State President, and if the court so directs after the accused has pleaded to the charge, the accused shall not be entitled under section 106 (4) to be acquitted or to be convicted in respect of the charge in question.

(b) If the court makes a finding in terms of paragraph (a) after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside, and if the accused has pleaded guilty it shall be deemed that he has pleaded not guilty.”.

11. Section 78 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

Amendment of section 78 of Act 51 of 1977.

“(6) If the court finds that the accused committed the act in question and that he at the time of such commission was by reason of mental illness or mental defect not criminally responsible for such act—

(a) the court shall find the accused not guilty, or

(b) if the court so finds after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside and find the accused not guilty,

by reason of mental illness or mental defect, as the case may be, and direct that the accused be detained in a mental hospital or a prison pending the signification of the decision of the State President.”.

12. Section 154 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

Amendment of section 154 of Act 51 of 1977.

“(5) Any person who publishes any information in contravention of this section or contrary to any direction or authority under this section or who in any manner whatever reveals the identity of a witness in contravention of a direction under section 153 (2), shall be guilty of an offence and liable on conviction to a fine not exceeding **[five hundred rand] R1 500** or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

13. Section 170 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of section 170 of Act 51 of 1977, as amended by section 5 of Act 109 of 1984.

“(2) The court may, if satisfied that an accused referred to in subsection (1) has failed to appear at the place and on the date and at the time to which the proceedings in question were adjourned or has failed to remain in attendance at such proceedings as so adjourned, issue a warrant for his arrest and, when he is brought before the court, in a summary

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5 manner enquire into his failure so to appear or so to remain in attendance and, unless the accused satisfies the court that his failure was not due to fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding **[R100] R300** or to imprisonment for a period not exceeding three months.”.

14. Section 183 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 183 of Act 51 of 1977.

10 “(2) Any person who fails to comply with the provisions of subsection (1), shall be guilty of an offence and liable on conviction to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”.

15. Section 250 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: Amendment of section 250 of Act 51 of 1977.

20 “(3) Any person who is the holder of the necessary authority and who fails without reasonable cause to produce forthwith such authority to the person making the demand under subsection (2) for the production thereof, or who fails without reasonable cause to submit such authority to a person and at a place and within such reasonable time as the person making the demand may specify, shall be guilty of an offence and liable on conviction to a fine not exceeding **[one hundred rand] R300** or to imprisonment for a period not exceeding three months.”.

16. Section 285 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph, the existing subsection becoming paragraph (a): Amendment of section 285 of Act 51 of 1977.

30 “(b) the court which tries any person on a charge of contravening subsection (4) (a) shall, subject to subsection (5), cause a notice as contemplated in paragraph (a) to be served on that person.”.

17. Section 292 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 292 of Act 51 of 1977.

35 “(1) When a court may sentence a person to a whipping, the whipping may be imposed in addition to or in substitution of any other punishment to which such person may otherwise be sentenced: Provided that a whipping shall not be imposed in addition to any sentence of imprisonment, with or without the option of a fine, unless the whole or part of that imprisonment is suspended.”.

18. Section 293 of the principal Act is hereby amended— Amendment of section 293 of Act 51 of 1977.

45 (a) by the deletion of subparagraph (iv) of paragraph (a);  
 (b) by the addition to paragraph (a) of the following subparagraphs:  
 “(v) murder, where the sentence of death is not imposed;  
 (vi) arson or malicious injury to property;  
 (vii) public violence or sedition;” and  
 50 (c) by the substitution for paragraph (c) of the following paragraph:  
 “(c) culpable homicide involving an assault; or”.

19. Section 294 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph, the existing subsection becoming paragraph (a): Amendment of section 294 of Act 51 of 1977.

55 “(b) Notwithstanding the provisions of paragraph (a) a male person of or over the age of 17 years but under the age of 21 years may be sentenced to a whipping in terms of

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that paragraph in addition to any other sentence excluding imprisonment, with or without the option of a fine, unless the whole of that imprisonment is suspended.”.

5 20. Section 297 of the principal Act is hereby amended—

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

“(cc) the **[rendering] performance without remuneration and outside the prison of some service for the benefit of the community under the supervision or control of an organization or institution which, or person who, in the opinion of the court, promotes the interests of the community (in this section referred to as community service);**”;

Amendment of section 297 of Act 51 of 1977, as amended by section 21 of Act 59 of 1983.

15 (b) by the insertion after subsection (1) of the following subsection:

“(1A) A condition relating to the performance of community service shall only be imposed—

(a) if the person concerned is 15 years or older; and

(b) for the performance of that service for a period of **not less than 50 hours.**”;

20 (c) by the substitution in subsection (8) for the words following upon paragraph (b) of the following words:

“on condition that the person concerned **[render some service for the benefit of the community] perform community service** or that he submit himself to instruction or treatment or to the supervision or control of a probation officer or that he attend or reside at a specified centre for a specified purpose, may, whether or not the court is constituted differently than it was at the time of such postponement or suspension, at any time during the period of postponement or suspension on good cause shown amend any such condition or substitute any other competent condition for such condition, **or cancel the order of postponement or suspension and impose a competent sentence or put the suspended sentence into operation, as the case may be.**”;

35 (d) by the insertion after subsection (8) of the following subsections:

40 “(8A) (a) A court which under this section has imposed a condition according to which the person concerned is required to perform community service, to undergo instruction or treatment or to attend or reside at a specified centre for a specified purpose, shall cause to be served upon the person concerned a notice in writing directing him to report on a date and time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as practicable thereafter, to the person specified in that notice, whether within or outside the area of jurisdiction of the court, in order to perform that community service, to undergo that instruction or treatment or to attend that centre or to reside thereat, as the case may be.

45 (b) A copy of the said notice shall serve as authority to the person mentioned therein to have that community service performed by the person concerned or to provide that instruction or treatment to the person concerned or to allow the person concerned to attend that centre or to reside thereat.

50 (8B) Any person who —

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5 (a) when he reports to perform community service, to undergo instruction or treatment or to attend or reside at a specified centre for a specified purpose, is under the influence of intoxicating liquor or drugs or the like; or

10 (b) impersonates or falsely represents himself to be the person who has been directed to perform the community service in question, to undergo the instruction or treatment in question or to attend or reside at the specified centre for the specified purpose,

shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding three months.”.

15 21. The following section is hereby inserted after section 297 of the principal Act:

Insertion of section 297A in Act 51 of 1977.

20 “Liability for patrimonial loss arising from performance of community service. 297A. (1) If patrimonial loss may be recovered from an accused on the ground of a delict committed by him in the performance of community service in terms of section 297, that loss may, subject to subsection (3), be recovered from the State.

25 (2) Subsection (1) shall not be construed as precluding the State from obtaining indemnification against its liability in terms of subsection (1) by means of insurance or otherwise.

(3) The patrimonial loss which may be recovered from the State in terms of subsection (1) shall be reduced by the amount from any other source to which the injured person is entitled by reason of the patrimonial loss suffered by him.

30 (4) In so far as the State has made a payment by virtue of a right of recovery in terms of subsection (1), all the relevant rights and legal remedies of the injured person against the accused shall pass to the State.

35 (5) If any person as a result of the performance of community service in terms of section 297 has suffered patrimonial loss which cannot be recovered from the State in terms of subsection (1), the Director-general: Justice may, with the concurrence of the Treasury, as an act of grace pay such amount as he may deem reasonable to that person.”.

22. The following section is hereby inserted after section 304 of the principal Act:

Insertion of section 304A in Act 51 of 1977.

45 “Review of proceedings before sentence. 304A. (1) (a) If a magistrate or regional magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he brought in a conviction are not in accordance with justice, or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit them, together with the record of the proceedings, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as practicable, lay the same for review in chambers before a judge, who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 303.

50 (b) When a magistrate or a regional magistrate acts in terms of paragraph (a), he shall inform the accused accordingly and postpone the case to some future date pending the outcome of the review

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proceedings and, if the accused is in custody, the magistrate or regional magistrate may make such order with regard to the detention or release of the accused as he may deem fit.”.

- 5 23. Section 308 of the principal Act is hereby amended by the  
addition of the following subsection:  
“(3) Notwithstanding the provisions of subsection (2),  
such person may, pending the review, be released on warning  
on a condition as contemplated in section 307 (3), in which  
10 case the provisions of section 72 shall *mutatis mutandis* ap-  
ply.”.
24. The following section is hereby substituted for section 338  
of the principal Act:
- 15 “Production of document by accused in criminal proceedings. 338. Where any law requires any person to pro-  
duce any document at any criminal proceedings at  
which such person is an accused, and such person  
fails to produce such document at such proceedings,  
such person shall be guilty of an offence, and the  
court may in a summary manner enquire into his fail-  
20 ure to produce the document and, unless such person  
satisfies the court that his failure was not due to any  
fault on his part, sentence him to any punishment  
provided for in such law, or, if no punishment is so  
provided, to a fine not exceeding **[one hundred rand]**  
25 **R300** or to imprisonment for a period not exceeding  
three months.”.
25. Section 341 of the principal Act is hereby amended by the  
substitution for paragraph (e) of subsection (2) of the following  
paragraph:  
30 “(e) For the purposes of this subsection “local authority”  
means a city council, a town council, a village council,  
a village management board, a divisional council, a re-  
gional services council or a local board.”.
26. (1) This Act shall be called the Criminal Procedure  
35 Amendment Act, 1986.
- (2) Sections 6, 20 and 21 shall come into operation on a date  
fixed by the State President by proclamation in the *Gazette*.

Amendment of  
section 308 of  
Act 51 of 1977,  
as amended by  
section 16 of  
Act 105 of 1982.

Substitution of  
section 338 of  
Act 51 of 1977.

Amendment of  
section 341 of  
Act 51 of 1977.

Short title and  
commencement.