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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 770.

11 Maart 1992

No. 770.

11 March 1992

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. 4 van 1992: Strafrekwysigingswet, 1992.

No. 4 of 1992: Criminal Law Amendment Act, 1992.

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.

ACT

To amend the Criminal Procedure Act, 1955, so as to provide for an increase of the amount which may be fixed by a magistrate in respect of a recognizance as security to keep the peace; to amend the Sexual Offences Act, 1957, so as to provide that a fine may be imposed upon conviction of certain offences; to amend the Criminal Procedure Act, 1977, so as to provide that an admission of guilt fine may be paid in respect of a failure in certain instances to appear in court or to remain in attendance at criminal proceedings; to empower a court to extend the period of enquiry into the mental capacity of an accused under certain circumstances in his absence; to provide that malicious injury to property constitutes a competent verdict on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, or attempted housebreaking; to exempt certain serious common law offences from offences in respect of which a conviction will fall away as a previous conviction after a period of 10 years; and to provide that a magistrate or certain police officials may under certain circumstances consent to a medical examination of a minor; to amend the Internal Security Act, 1982, so as to effect a technical correction; and to provide for matters incidental thereto.

(English text signed by the State President.)
(Assented to 3 March 1992.)

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

Amendment of section 384 of Act 56 of 1955

1. Section 384 of the Criminal Procedure Act, 1955, is hereby amended—
- 5 (a) by the substitution in subsection (1) for the expression “twenty-five pounds” of the expression “R2 000”; and
- (b) by the substitution in subsection (3) for the expression “one month” of the expression “six months”.

10 **Amendment of section 22 of Act 23 of 1957, as substituted by section 4 of Act 68 of 1967 and amended by section 4 of Act 57 of 1969, section 4 of Act 72 of 1985 and section 9 of Act 2 of 1988**

2. Section 22 of the Sexual Offences Act, 1957, is hereby amended—
- (a) by the deletion of paragraph (c); and
- 15 (b) by the substitution for paragraphs (d) and (e) of the following paragraphs, respectively:
- “(d) in the case of an offence referred to in section 11, 12A or 18, with a fine, or **[to]** imprisonment for a period not exceeding five years;

- (e) in the case of an offence referred to in section 10, 12(1) or 13(1), to imprisonment for a period not exceeding seven years;”.

Amendment of section 55 of Act 51 of 1977, as amended by section 14 of Act 59 of 1983 and section 5 of Act 33 of 1986

- 5 3. Section 55 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (2A) of the following subsection:

10 “(2A) (a) 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)—

- (i) an endorsement to the same effect shall be made on the warrant in question;
- (ii) the court may make a further endorsement on the warrant to the effect that the accused may admit his guilt in respect of the failure to appear in answer to the summons or to remain in attendance at the criminal proceedings, and that he may upon arrest pay to a clerk of the court or at a police station a fine stipulated on the warrant in respect of such failure, which fine shall not exceed the amount to be imposed in terms of subsection (2), without appearing in court.

20 (b) The fine paid in terms of paragraph (a) at a police station or to a clerk of a magistrate’s court other than the magistrate’s court which issued the warrant of arrest, shall, as soon as is expedient, together with the warrant of arrest in question, be forwarded to the clerk of the court which issued that warrant, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such admission of guilt in the criminal record book for admission of guilt, whereupon the accused concerned shall be deemed to have been convicted by the court in respect of the offence in question.”.

Amendment of section 79 of Act 51 of 1977

- 30 4. Section 79 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):

35 “(b) When the period of committal is for the first time extended under paragraph (a), such extension may be granted in the absence of the accused unless the accused or his legal representative requests otherwise.”.

Amendment of section 262 of Act 51 of 1977, as amended by section 6 of Act 64 of 1982

5. Section 262 of the principal Act is hereby amended—

40 (a) by the substitution for subsection (2) of the following subsection:

45 “(2) If the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit an offence to the prosecutor unknown, but the offence of housebreaking with intent to commit a specific offence, or the offence of malicious injury to property, the accused may be found guilty of the offence so proved.”; and

(b) by the addition of the following subsection:

50 “(3) If the evidence on a charge of attempted housebreaking with intent to commit an offence specified in the charge, or attempted housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of attempted housebreaking with intent to commit the offence so specified, or attempted housebreaking with intent to commit an offence to the prosecutor unknown, but the offence of malicious injury to property, the accused may be found guilty of the offence so proved.”.

55

Amendment of section 271A of Act 51 of 1977, as inserted by section 12 of Act 5 of 1991

6. Section 271A of the principal Act is hereby amended—

- 5 (a) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:
 “an offence **[specified in Schedule 1]** for which the punishment may be a period of imprisonment exceeding six months without the option of a fine, and—”; and
- 10 (b) by the substitution for paragraph (b) and the words following thereupon, of the following paragraph and words:
 “(b) any other offence than that **[referred to in Schedule 1]** for which the punishment may be a period of imprisonment exceeding six months without the option of a fine,
 15 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]** for which the punishment may be a period of imprisonment exceeding six months without the option of a fine.”.

20 **Insertion of section 335B in Act 51 of 1977**

7. The following section is hereby inserted in the principal Act after section 335A:

“Medical examination of minors towards or in connection with whom certain offences have been committed

- 25 **335B. (1)** If a police official charged with the investigation of a case is of the opinion that it is necessary that a minor in respect of whom it is alleged that an offence of an indecent or violent nature has been committed be examined by a district surgeon or, if he is not available, by a registered medical practitioner, but that the parent or guardian of such minor—
- 30 (a) cannot be traced within a reasonable time;
 (b) cannot grant consent in time;
 (c) is a suspect in respect of the offence in consequence of which the examination must be conducted;
 35 (d) unreasonably refuses to consent that the examination be conducted;
 (e) is incompetent on account of mental disorder to consent that the examination be conducted; or
 (f) is deceased,
 40 a magistrate may, on the written application of that police official and if he is satisfied that the medical examination is necessary, grant the necessary consent that such examination be conducted.
- (2) If a magistrate is not available to grant consent as referred to in subsection (1), a commissioned officer as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), or the police official in charge of the local police station may in writing grant such consent if the police official charged with the investigation of the case declares under oath that the consent of a magistrate cannot be obtained within a reasonable period of time and the district surgeon or registered medical practitioner declares under oath that the purpose of the medical examination will be defeated if the examination is not conducted forthwith.”.
- 50

Amendment of section 29 of Act 74 of 1982, as amended by section 13 of Act 138 of 1991

- 55 8. Section 29 of the Internal Security Act, 1982, is hereby amended by the substitution in the words following upon paragraph (b) of subsection (1) for the expression “subsection (4)” of the expression “subsection (3)”.

Short title

9. This Act shall be called the Criminal Law Amendment Act, 1992.