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STAATSKOERANT

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 713.

21 April 1982.

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21 April 1982.

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

No. 64 van 1982: Strafproseswysigingswet, 1982.

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

No. 64 of 1982: Criminal Procedure Amendment Act, 1982.

CRIMINAL PROCEDURE AMENDMENT ACT, 1982

Act No. 64, 1982

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 make provision for the taking of photographs of persons arrested upon any charge, released on bail or on warning or convicted of any offence or against whom a preparatory examination has been concluded on any charge; to further regulate the deposit by an accused of bail money with a police official at the place where the accused is in custody; to extend the category of accused who may be called upon to plead in a magistrate's court in a trial intended for a superior court; to permit assessors at criminal trials in superior courts to take part in decisions upon the admissibility of certain evidence; to make provision that an accused may be found guilty of the offence of malicious injury to property if the evidence on a charge of housebreaking with intent to commit an offence specified in the charge proves the first-named but not the last-named offence; to limit the circumstances under which a court may order that a person convicted of any of certain offences be detained at a rehabilitation centre; to make further provision in connection with the compounding of certain offences; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 26 March 1982.)

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

1. Section 37 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended—

Amendment of
section 37 of
Act 51 of 1977.

5 (a) by the addition to subsection (1) of the following paragraph:

“(d) take a photograph or may cause a photograph to be taken of a person referred to in paragraph (a) (i) or (ii).”;

10 (b) by the substitution for subsection (4) of the following subsection:

“(4) Any court which has convicted any person of any offence or which has concluded a preparatory examination against any person on any charge, or any magistrate, may order that the finger-prints, palm-prints or foot-prints, or a photograph, of the person concerned be taken.”; and

15 (c) by the substitution for subsection (5) of the following subsection:

20 “(5) Finger-prints, palm-prints or foot-prints, photographs and the record of steps taken under this section shall be destroyed if the person concerned is found not guilty at his trial or if his conviction is set aside by a superior court or if he is discharged at a preparatory examination or if no criminal proceedings with refer-

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ence to which such prints or photographs were taken or such record was made are instituted against the person concerned in any court or if the prosecution declines to prosecute such person.”.

5 2. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 60 of Act 51 of 1977, as amended by section 2 of Act 56 of 1979.

10 “(1) An accused who is in custody in respect of any offence may at his first appearance in a lower court or at any stage after such appearance, apply to such court or, if the proceedings against the accused are pending in a superior court, to that court, to be released on bail in respect of such offence, and any such court may, subject to the provisions of section 61, release the accused on bail in respect of such offence on condition that the accused deposits with the clerk of the court or the registrar of the court, as the case may be, or with a member of the prisons service at the prison where the accused is in custody or **[in the case of a periodical court, if no clerk of the court is available]** with any police official at the place where the accused is in custody, the sum of money determined by the court in question.”.

15 3. The following section is hereby substituted for section 119 of the principal Act: Substitution of section 119 of Act 51 of 1977, as amended by section 5 of Act 56 of 1979.

25 “Accused to plead in magistrate’s court on instructions of attorney-general. **119. When an accused [is brought before a magistrate’s court under section 50 (1), including an accused released on bail under section 59 or on warning by a police official under section 72] appears in a magistrate’s court and the alleged offence may be tried by a superior court only or is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate’s court, the prosecutor may, notwithstanding the provisions of section 75, on the instructions of the attorney-general, whether in general or in any particular case, put the charge to the accused in the magistrate’s court, and the accused shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead to the charge forthwith.”.**

30 4. Section 145 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection: Amendment of section 145 of Act 51 of 1977.

35 “(4) **An assessor who takes an oath or makes an affirmation under subsection (3) shall be a member of the court: Provided that—**

40 (a) subject to the provisions of paragraphs (b) and (c) of this proviso and of section 217 (3) (b), the decision or finding of the majority of the members of the court upon any question of fact or upon the question referred to in the said paragraph (b) shall be the decision or finding of the court, except when the presiding judge sits with only one assessor, in which case the decision or finding of the judge shall, in the case of a difference of opinion, be the decision or finding of the court;

50 (b) if the presiding judge is of the opinion that it would be in the interests of the administration of justice that the assessor or the assessors assisting him do not take part in any decision upon the question whether evidence of any confession or other statement made by an accused is admissible as evidence against him, the judge alone shall decide upon such question, and he may for this purpose sit alone;

55 (c) the presiding judge alone shall decide upon any other question of law or upon any question whether any matter constitutes a question of law or a question of fact, and he may for this purpose sit alone.”.

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5. The following section is hereby substituted for section 146 of the principal Act:

Substitution of section 146 of Act 51 of 1977.

“Reasons for decision by superior court in criminal trial. 146. A judge presiding at a criminal trial in a superior court shall—

(a) where he decides any question of law, including any question under paragraph [(a)] (c) of the proviso to section 145 (4) whether any matter constitutes a question of law or a question of fact, give the reasons for his decision;

(b) whether he sits with or without assessors, give the reasons for the decision or finding of the court upon any question of fact;

(c) where he sits with assessors, give the reasons for the decision or finding of the court upon the question referred to in paragraph (b) of the proviso to section 145 (4);

[(c)] (d) where he sits [with an assessor or] with assessors and there is a difference of opinion upon any question of fact or upon the question referred to in paragraph (b) of the proviso to section 145 (4), give the reasons for the decision or finding of the member of the court who is in the minority or, where the presiding judge sits with only one assessor, of such an assessor.”

6. Section 262 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 262 of Act 51 of 1977.

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

7. Section 296 of the principal Act is hereby amended by the addition to subsection (1) of the following proviso:

Amendment of section 296 of Act 51 of 1977, as amended by section 15 of Act 56 of 1979.

“Provided that such order shall not be made in addition to any sentence of imprisonment (whether direct or as an alternative to a fine) unless the operation of the whole of such sentence is suspended.”

8. Section 307 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

Amendment of section 307 of Act 51 of 1977, as amended by section 17 of Act 56 of 1979.

“(b) if such person was not so released on bail and the attorney-general has not in terms of section 61 objected to the granting of bail to such person, release him on bail on condition that he deposits with the clerk of the court or with a member of the prisons service at the prison where such person is in custody or [in the case of a periodical court, if no clerk of the court is available] with any police official at the place where such convicted person is in custody, the sum of money determined by the court in question; or”

9. Section 341 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs:

Amendment of section 341 of Act 51 of 1977.

“(a) [In the case] Where a notification referred to in subsection (1) is issued by a peace officer in the service of a local authority in respect of an offence [other than an offence under the common law or under the Motor Car-

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- 5 **rier Transportation Act, 1930 (Act 39 of 1930), relating to any vehicle] committed within the area of jurisdiction of [a] such local authority, any person receiving [a notification in terms of subsection (1) from a peace officer in the service of such local authority] the notification** may deliver or transmit **[the notification] it** together with a sum of money equal to the amount specified **[in the notification] therein** to such local authority.
- 10 (b) Any sum of money paid to a local authority as provided in paragraph (a) shall **[for the purposes of section 22 of the Financial Adjustments Act, 1932 (Act 25 of 1932)]** be deemed to be a fine imposed **[as a traffic fine] in respect of the offence in question."**
- 15 **10.** This Act shall be called the Criminal Procedure Amend- Short title.
ment Act, 1982.