

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.



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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1512.

10 July 1991

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

No. 118 of 1991: Magistrates' Courts Amendment Act, 1991

No. 1512.

10 Julie 1991

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

No. 118 van 1991: Wysigingswet op Landdroshowe, 1991

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 Magistrates' Courts Act, 1944, so as to further regulate assistance by assessors at criminal proceedings; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 27 Junie 1991.)

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

Amendment of section 93ter of Act 32 of 1944, as inserted by section 3 of Act 14 of 1954 and amended by section 2 of Act 16 of 1959 and section 10 of Act 91 of 1977

1. Section 93ter of the Magistrates' Courts Act, 1944, is hereby amended— 5
- (a) by the substitution for subsection (1) of the following subsection: 5
- “(1) The judicial officer presiding at any trial may, if he deems it expedient for the administration of justice—
- (a) before any evidence has been led; **[with the approval of the Minister,] or** 10
- (b) in considering a community-based punishment in respect of any person who has been convicted of any offence, 10
- summon to his assistance **[any person who has or] any one or two persons who, [have] in his opinion, [experience in the administration of justice or skill in any matter which may have to be considered]** 15
- may be of assistance at the trial of the case or in the determination of a proper sentence, as the case may be, to sit with him [at the trial] 15
- as assessor or assessors: Provided that if an accused is standing trial in the court of a regional division on a charge of murder, whether together with other charges or accused or not, the judicial officer shall at that trial be assisted by two assessors unless such an accused requests that the trial be proceeded with without assessors, whereupon the judicial officer may in his discretion summon one or two assessors to assist him.” 20
- (b) by the insertion of the following subsection after subsection (1): 25
- “(2) (a) In considering whether summoning assessors under subsection (1) would be expedient for the administration of justice, the judicial officer shall take into account—
- (i) the cultural and social environment from which the accused originates; 30
- (ii) the educational background of the accused;
- (iii) the nature and the seriousness of the offence of which the accused stands accused or has been convicted;

- (iv) the extent or probable extent of the punishment to which the accused will be exposed upon conviction, or is exposed, as the case may be;
- (v) any other matter or circumstance which he may deem to be indicative of the desirability of summoning an assessor or assessors, 5
and he may question the accused in relation to the matters referred to in this paragraph.
- (b) For the purposes of subsection (1)(b) a community-based punishment means— 10
- (i) correctional supervision as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (ii) a punishment contemplated in section 297(1)(a)(i)(cc) of the Criminal Procedure Act, 1977; or
- (iii) a punishment contemplated in section 297(1)(b) or (4) of the Criminal Procedure Act, 1977, and where the performance of community service as referred to in the said section 297(1)(a)(i)(cc), is a condition for the suspension.”; 15
- (c) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 20
- “Before the trial or the imposition of punishment, as the case may be, the said judicial officer shall administer an oath to the person or persons whom he has so called to his assistance that he or they will give a true verdict or a considered opinion, as the case may be, according to the evidence upon the issues to be tried or regarding the punishment, as the case may be, and thereupon he or they shall be a member or members of the court subject to the following provisions:”; and 25
- (d) by the substitution in subsection (3) for paragraph (f) of the following paragraph: 30
- “(f) in the event of a conviction the question of the punishment to be inflicted shall, except in a case contemplated in subsection (1)(b), be deemed, for the purposes of paragraph (a), to be a question of law.”

Short title and commencement 35

2. (1) This Act shall be called the Magistrates' Courts Amendment Act, 1991, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be fixed in terms of subsection (1) in respect of different districts and regional divisions as referred to in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944). 40