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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1661.

17 July 1991

No. 1661.

17 Julie 1991

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

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

No. 135 of 1991: Criminal Law Amendment Act, 1991

No. 135 van 1991: Strafwysingswet, 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 Criminal Procedure Act, 1977, so as to provide that certain witnesses may give their evidence through intermediaries and that certain persons may be detained in or placed under protective custody; to amend the Correctional Services Act, 1959, so as to effect certain consequential amendments; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 27 June 1991.)

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

Amendment of section 161 of Act 51 of 1977

1. Section 161 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) In this section the expression ‘*viva voce*’ shall, in the case of a deaf and dumb witness, be deemed to include gesture-language and, in the case of a witness under the age of eighteen years, be deemed to include demonstrations, gestures or any other form of non-verbal expression.”.

Substitution of section 165 of Act 51 of 1977 10

2. The following section is hereby substituted for section 165 of the Criminal Procedure Act, 1977:

“Oath, affirmation or admonition may be administered by or through interpreter or intermediary

165. Where the person concerned is to give his evidence through an interpreter or an intermediary appointed under section 170A(1), the oath, affirmation or admonition under section 162, 163 or 164 shall be administered by the presiding judge or judicial officer or the registrar of the court, as the case may be, through the interpreter or intermediary or by the interpreter or intermediary in the presence or under the eyes of the presiding judge or judicial officer, as the case may be.”. 20

Insertion of section 170A in Act 51 of 1977

3. The following section is hereby inserted after section 170 of the Criminal Procedure Act, 1977: 25

“Evidence through intermediaries

170A. (1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the age of eighteen years to undue mental stress or suffering if he testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his evidence through that intermediary. 5

(2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), except examination by the court, shall take place in any manner other than through that intermediary. 10

(b) The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness.

(3) If a court appoints an intermediary under subsection (1), the court may direct that the relevant witness shall give his evidence at any place— 15

(a) which is informally arranged to set that witness at ease;

(b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and

(c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary as well as that witness during his testimony. 20

(4) (a) The Minister may by notice in the *Gazette* determine the persons or the category or class of persons who are competent to be appointed as intermediaries. 25

(b) An intermediary who is not in the full-time employment of the State shall be paid such travelling and subsistence and other allowances in respect of the services rendered by him as the Minister, with the concurrence of the Minister of Finance, may determine.”. 30

Insertion of section 185A in Act 51 of 1977

4. The following section is hereby inserted after section 185 of the Criminal Procedure Act, 1977:

“Detention in or placing under protective custody at request of witness or prospective witness 35

185A. (1) Whenever any person who has given evidence in criminal proceedings with reference to any offence referred to in Schedule 1 or the offence of bribery, extortion, defeating the ends of justice or perjury, or who is likely to give material evidence with reference to any such offence at criminal proceedings in any court, has reason to believe that his safety or the safety of any member of his family or household is being threatened by any person or by any group or class of persons, whether known to him or not, who have— 40

(a) caused or wish to cause him harm as a result of the evidence which he has given; 45

(b) attempted to prevent or wish to prevent him from giving evidence; or

(c) attempted to persuade or wish to persuade him to give evidence to a particular effect, 50

as the case may be, he may report to any police station or prison as defined in section 1 of the Correctional Services Act, 1959 (Act No. 8 of 1959), and put a request, on the form prescribed by regulation under this section, to the person in charge of that police station or

prison to detain him, such member or any dependant of his or of such member in, or to place him, such member or such dependant under, protective custody.

(2) (a) If a witness or prospective witness referred to in subsection (1), a member of his family or household or a dependant of his or of such member or, where such witness, member or dependant is a minor, his parent or guardian has completed and signed an authorization, on the form prescribed by regulation under this section—

(i) to be detained in protective custody, such witness, member or dependant shall forthwith be taken to a place of safety similarly prescribed for that purpose and detained there in accordance with regulations under this section; or

(ii) to be placed under protective custody, such witness, member or dependant shall forthwith be placed under protective custody in such manner as may be prescribed by the said regulations:

Provided that any person in respect of whom an authorization has been completed and signed—

(aa) to be detained in protective custody and who is so being detained under subparagraph (i), may at any time be placed under protective custody in terms of subparagraph (ii); and

(bb) to be placed under protective custody and who has been so placed in terms of subparagraph (ii), may at any time be detained in protective custody under subparagraph (i).

(b) The person in charge of a police station or prison referred to in subsection (1), shall forthwith submit a copy of any request put to him in terms of that subsection to the attorney-general.

(3) The attorney-general may at any time in writing advise the person—

(a) in charge of the place where a witness or prospective witness is being detained in protective custody under this section; or

(b) who is responsible for the protective custody of a witness or prospective witness in terms of any regulation under this section, that he is of the opinion—

(i) that the witness or prospective witness is not entitled to protective custody under this section;

(ii) that the safety of the witness or prospective witness or a member of his family or household would no longer be threatened; or

(iii) that satisfactory arrangements have been made for the safety of the witness or prospective witness or a member of his family or household,

whereupon such person shall without delay release the witness or prospective witness and any member of his family or household or any dependant of his or of such member who is being detained in or has been placed under protective custody under this section from detention, or relieve such witness, member or dependant from protection, as the case may be.

(4) Subject to the provisions of subsection (3), any person who is being detained in or has been placed under protective custody under this section shall so remain in or under custody until he or, where he is a minor, his parent or guardian submits a discharge from detention or a waiver of protection, on the form prescribed by regulation under this section, to the person in charge of the place where he is being detained or to the person who is responsible for his custody in terms of any regulation under this section, as the case may be: Provided that in the case of a prospective witness referred to in subsection (1)—

(a) such witness shall, subject to paragraph (b), so remain in or under custody for a period of 30 days as from the date on which the attorney-general in writing advises the person so in charge or responsible that the custody of such witness is in his opinion necessary;

- (b) such witness and any member of his family or household or any dependant of his or of such member who is being detained in or has been placed under protective custody under this section shall be released from detention or relieved from protection, as the case may be, on the day on which the criminal proceedings concerned are concluded. 5
- (5) (a) The Minister may make regulations as to—
- (i) the detention in or the placing under protective custody of persons;
 - (ii) the protection of the identity of such persons; 10
 - (iii) any matter required or permitted to be prescribed under this section by regulation; and
 - (iv) in general, any matter which the Minister may consider necessary or expedient to prescribe or regulate in order that the objects of this section may be achieved. 15
- (b) Different regulations may be made under paragraph (a) in respect of different categories of persons, witnesses or prospective witnesses.
- (c) Regulations made under paragraph (a) may prescribe for any contravention thereof or failure to comply therewith penalties not exceeding a fine of R20 000 or imprisonment for a period of five years. 20
- (d) A magistrate's court shall have jurisdiction to impose any penalty provided for by regulations made under paragraph (a).
- (6) The State, the Minister or any person in the service of the State shall not be liable in respect of anything done in good faith under the provisions of this section or any regulation made thereunder. 25
- (7) Any person who in or in connection with a request to be detained in or placed under protective custody wilfully furnishes information or makes a statement which is false or misleading shall be guilty of an offence and liable on conviction to the punishment prescribed for the offence of perjury. 30
- (8) For the purposes of subsections (1) and (2)(b) 'the person in charge of a police station or prison' means the senior person in charge of the police station or prison at the relevant time."

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985 and section 1 of Act 92 of 1990 35

5. Section 1 of the Correctional Services Act, 1959, is hereby amended by the substitution for the definition of "prison" of the following definition: 40

"'prison' means any place established or deemed to have been established under this Act as a place for the reception, detention, confinement, training or treatment of persons liable to detention in custody or to detention in or placing under protective custody, and includes the seashore, the sea within a distance of one nautical mile from low-water mark and all land, outbuildings and premises adjacent to any such place and used in connection therewith and all land, branches, outstations, camps, buildings, premises or places to which any such persons have been sent for the purpose of imprisonment, detention, protection, labour, treatment or otherwise, and all quarters of members of the Department used in connection with any such prison; and for the purposes of any offence under this Act or any contravention of or failure to comply with any provision of this Act, further includes every place used as a police cell or lock-up;" 45 50

Amendment of section 20 of Act 8 of 1959, as substituted by section 9 of Act 92 of 1990

6. Section 20 of the Correctional Services Act, 1959, is hereby amended by the insertion after subsection (2) of the following subsection:

- “(2A) (a) Notwithstanding the provisions of subsection (1), the Minister may without notice referred to in that subsection establish a prison in respect of any place which in his opinion is suitable to detain a particular person or particular persons in, or to place such person or persons under, protective custody under section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”
- (b) The Minister may at any time disestablish a prison referred to in paragraph (a).”

Amendment of section 27 of Act 8 of 1959, as amended by section 6 of Act 58 of 1978, section 4 of Act 88 of 1977 and section 8 of Act 104 of 1983

7. Section 27 of the Correctional Services Act, 1959, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
“(1) Unconvicted persons shall be received only at a prison established or deemed to have been established under paragraph (a) of subsection (1) or subsection (2A) of section [twenty] 20.”;
- (b) by the insertion after paragraph (d) of subsection (2) of the following paragraph:
“(dA) in the case of a person required to be detained in or placed under protective custody under section 185A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), upon production to him of an authorization to detain that person in or to place him under protective custody;”;
- (c) by the substitution for the words following upon paragraph (e) of the said subsection (2) of the following words:
“and every such member of the Department shall keep every such warrant [or order] or certified copy thereof, order or authorization throughout the period during which any person referred to therein is in or under his custody.”

Short title and commencement

8. (1) This Act shall be called the Criminal Law Amendment Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.