

No. 16, 1959.]

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.

ACT

To amend the Magistrates' Courts Act, 1944, and the Criminal Procedure Act, 1955.

*(Afrikaans text signed by the Governor-General.)
(Assented to 23rd March, 1959.)*

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Substitution of section 92 of Act 32 of 1944, as amended by section 21 of Act 40 of 1952.

1. The following section is hereby substituted for section *ninety-two* of the Magistrates' Courts Act, 1944:

92. Save as otherwise in this Act or in any other law specially provided, the court, whenever it may punish a person for an offence—

“Limits of jurisdiction in the matter of punishments.”

(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding six months, where the court is not the court of a regional division, or not exceeding three years, where the court is the court of a regional division;

(b) by fine, may impose a fine not exceeding one hundred pounds, where the court is not the court of a regional division, or not exceeding three hundred pounds, where the court is the court of a regional division;

(c) by whipping, may impose a sentence of whipping with a cane only.”

Amendment of section 93*ter* of Act 32 of 1944, as inserted by section 3 of Act 14 of 1954.

2. Section *ninety-three ter* of the Magistrates' Courts Act, 1944, is hereby amended—

- (a) by the substitution in sub-section (2) for the expression *“two hundred and twenty-eight of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917)”* of the expression *“one hundred and eighty-nine of the Criminal Procedure Act, 1955 (Act No. 56 of 1955)”*;
- (b) by the addition at the end thereof of the following sub-section:
- “(5) The provisions of sub-sections (1), (2) and (5) of section one hundred and ten of the Criminal Procedure Act, 1955, shall mutatis mutandis apply where an assessor referred to in this section dies or becomes in the opinion of the presiding judicial officer incapable of continuing to act as an assessor.”*

Substitution of section 94 of Act 32 of 1944.

3. The following section is hereby substituted for section *ninety-four* of the Magistrates' Courts Act, 1944:

94. When a case in which a preparatory examination has been held, has been remitted for trial or sentence, the court to which it has been remitted shall deal therewith as prescribed in the Criminal Procedure Act, 1955, and may, in respect of each offence or count to which the remittal refers, impose a sentence which in accordance with the terms of the remittal is within its jurisdiction.”

“Cases remitted for trial or sentence.”

Amendment of section 96 of Act 32 of 1944, as amended by section 25 of Act 40 of 1952 and section 25 of Act 62 of 1955.

4. Section *ninety-six* of the Magistrates' Courts Act, 1944, is hereby amended by the substitution in sub-section (1) for the expression *“Criminal Procedure and Evidence Act, No. 31 of 1917”* of the expression *“Criminal Procedure Act, 1955”*.

Amendment of section 100 of Act 32 of 1944, as amended by section 26 of Act 40 of 1952.

5. Section *one hundred* of the Magistrates' Courts Act, 1944, is hereby amended by the insertion in sub-section (1) after the word *“imprisonment”* of the words *“other than periodical imprisonment,”*.

- Amendment of section 101 of Act 32 of 1944. 6. Section *one hundred and one* of the Magistrates' Courts Act, 1944, is hereby amended—
- (a) by the deletion of the words "whether with or without hard labour";
 - (b) by the addition at the end thereof of the following sub-section, the existing section becoming sub-section (1):
 - "(2) The court may refuse to release any person on bail for the purposes of sub-section (1), in respect of a sentence of a fine or in default of payment imprisonment, if it is satisfied that such person is able to pay the fine."
- Amendment of section 102 of Act 32 of 1944. 7. Section *one hundred and two* of the Magistrates' Courts Act, 1944, is hereby amended by the substitution in sub-section (1) for the expression "Criminal Procedure and Evidence Act, No. 31 of 1917" of the expression "Criminal Procedure Act, 1955".
- Amendment of section 103 of Act 32 of 1944. 8. Section *one hundred and three* of the Magistrates' Courts Act, 1944, is hereby amended by the substitution in sub-section (1) for the expression "Criminal Procedure and Evidence Act, No. 31 of 1917" of the expression "Criminal Procedure Act, 1955".
- Amendment of section 114 of Act 32 of 1944. 9. Section *one hundred and fourteen* of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for sub-section (1) of the following sub-section:
- "(1) Nothing in this Act contained shall be construed as affecting the operation of the Criminal Procedure Act, 1955."
- Substitution of section 8 of Act 56 of 1955. 10. The following section is hereby substituted for section *eight* of the Criminal Procedure Act, 1955 (hereinafter referred to as the principal Act):
- "Power of stopping prosecutions. 8. (1) The attorney-general, or with his consent, any person delegated under section *six* or designated under section *seven*, may, at any time before conviction, stop any prosecution commenced at the public instance within the area of jurisdiction of the attorney-general.
- (2) An accused who has pleaded to a charge in respect whereof the prosecution has so been stopped, shall be entitled to a verdict of acquittal in respect of that charge."
- Amendment of section 22 of Act 56 of 1955. 11. Section *twenty-two* of the principal Act is hereby amended by the addition at the end of sub-section (1) of the following paragraphs:
- "(n) any person reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;
 - (o) any person reasonably suspected of having failed to pay any fine or portion thereof on the date fixed by order of court under this Act;
 - (p) any person who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or under the laws relating to prisons and gaols."
- Amendment of section 111 of Act 56 of 1955, as amended by section 26 of Act 50 of 1956. 12. Section *one hundred and eleven* of the principal Act is hereby amended by the substitution for the words "a notification on or attached to the notice of trial" of the words "notice served upon the registrar of the court and the accused person or persons".
- Amendment of section 117 of Act 56 of 1955. 13. Section *one hundred and seventeen* of the principal Act is hereby amended by the addition at the end of sub-section (2) of the words "and of all persons who from information furnished in their applications for registration as voters are clearly exempt from serving as jurors".
- Amendment of section 119 of Act 56 of 1955. 14. Section *one hundred and nineteen* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:
- "(1) Whenever a jury will be required for the trial of criminal cases in a superior court, the sheriff or his deputy shall summon as many jurors as the attorney-general may direct."

Insertion of section 179bis in Act 56 of 1955.

15. The following section is hereby inserted in the principal Act after section *one hundred and seventy-nine*:

"Defect in indictment or charge cured by evidence.

179bis. Whenever an indictment or charge in respect of any offence is defective for want of the averment of any matter which is an essential ingredient of the offence, the defect shall be cured by evidence at the trial in respect of the offence proving the presence of such a matter which should have been averred, unless the want of such averment was brought to the notice of the court before judgment."

Amendment of section 180 of Act 56 of 1955.

16. Section *one hundred and eighty* of the principal Act is hereby amended by the insertion after the word "charge" where it occurs for the last time in sub-section (1) of the expression "(whether or not it discloses an offence)".

Amendment of section 196 of Act 56 of 1955.

17. Section *one hundred and ninety-six* of the principal Act is hereby amended by the insertion of the following sub-section after sub-section (3):

"(3)bis. Any person charged with murder or culpable homicide in regard to whom it is not proved that he committed the crime of murder or culpable homicide, may be convicted of public violence if it is proved that in fact such offence was committed."

Insertion of section 200bis in Act 56 of 1955.

18. The following section is hereby inserted in the principal Act after section *two hundred*:

"Persons charged with receiving stolen goods knowing them to have been stolen, may be convicted of theft.

200bis. Any person charged with receiving stolen goods knowing them to have been stolen, may be found guilty of theft, if such be the facts proved."

Amendment of section 226 of Act 56 of 1955.

19. Section *two hundred and twenty-six* of the principal Act is hereby amended—

- (a) by the substitution in paragraph (d) of sub-section (1) for all the words after the words "provision of" of the expression "section *two, eight, nine, ten, eleven, twelve, thirteen, seventeen* or *twenty* of the Immorality Act, 1957 (Act No. 23 of 1957)";
- (b) by the substitution in sub-section (2) for the expression "the Immorality Act, 1927 (Act No. 5 of 1927)" of the expression "section *sixteen* of the Immorality Act, 1957".

Amendment of section 289 of Act 56 of 1955, as amended by section 28 of Act 50 of 1956.

20. Section *two hundred and eighty-nine* of the principal Act is hereby amended by the substitution in sub-section (3) for the words "may, at the request of the public prosecutor," of the words "or any magistrate may".

Insertion of sections 303bis and 303ter in Act 56 of 1955

21. The following sections are hereby inserted in the principal Act after section *three hundred and three*:

"Proof of previous convictions after conviction of offences referred to in Part I of the Third Schedule.

303bis. (1) Whenever an accused has been found guilty of an offence referred to in Part I of the Third Schedule, the court shall not pass sentence on the accused for such offence, whether or not any previous conviction has been proved against him, unless the prosecutor produces to the court a certificate purporting to be issued by the South African Criminal Bureau, which indicates the previous convictions recorded in the records of the said Bureau against the accused or indicates that no previous convictions have so been recorded.

(2) If the said certificate indicates any previous conviction which, if proved against the accused, would result in the compulsory imposition of a prescribed punishment on him, the court shall, notwithstanding anything to the contrary in this Chapter contained, afford the prosecutor an opportunity of proving the said previous conviction.

Rules relating to previous convictions to be taken into account in imposing sentence.

303ter. (1) The rules contained in the Fifth Schedule shall be observed by a court when taking previous convictions into account in imposing any sentence on a person convicted by it of an offence.

(2) The Governor-General may by proclamation in the *Gazette* amend or withdraw the rules contained in the Fifth Schedule or add new rules thereto.

(3) Any proclamations issued under sub-section (2) shall be laid on the Tables of both Houses of Parliament within fourteen days after promulgation thereof if Parliament is then in ordinary session or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

(4) If both Houses of Parliament by resolutions passed in the same session (being a session during which a proclamation has been laid on the Tables of both Houses of Parliament in terms of sub-section (3)) disapprove of any such proclamation or of any provision in any such proclamation, such proclamation or such provision thereof shall thereafter cease to be of force and effect to the extent to which it is so disapproved."

Amendment of section 304 of Act 56 of 1955.

22. Section *three hundred and four* of the principal Act is hereby amended by the addition of the following sub-section at the end thereof, the existing section becoming sub-section (1):

"(2) A telegram purporting to have been sent by any officer referred to in sub-section (1) or by any officer of any court, in reply to a request by the court for particulars relating to anything contained in such a record, photograph or document, shall likewise be admissible in evidence in any criminal proceedings and be *prima facie* proof of the facts set forth in such telegram."

Insertion of section 309bis in Act 56 of 1955.

23. The following section is hereby inserted in the principal Act after section *three hundred and nine*:

"Notice to appear in inferior court.

309bis. (1) If a peace officer has reasonable grounds for believing that an inferior court will on convicting any person of any offence, impose a sentence of a fine not exceeding fifteen pounds and hands to such person a written notice in the prescribed form calling upon him to appear to answer a charge of having committed such offence, such person shall, except for the purposes of sub-section (2) of section *three hundred and ten*, be deemed to have been duly summoned under section *three hundred and nine* to appear to answer the charge at the time and place stated in the notice.

(2) When a person under the age of nineteen years is handed a notice as aforesaid, the provisions of sub-sections (1), (2) and (4) of section *fifty-seven* shall *mutatis mutandis* apply as if the notice were a summons served by the said peace officer upon such person."

Substitution of section 329 of Act 56 of 1955, as amended by section 4 of Act 9 of 1958.

24. The following section is hereby substituted for section *three hundred and twenty-nine* of the principal Act:

"Nature of punishments.

329. (1) The following sentences may subject to the provisions of this Act and of any other law and of the common law be passed upon a person convicted of an offence, namely—

- (a) sentence of death;
- (b) imprisonment with or without solitary confinement and spare diet;
- (c) periodical imprisonment;
- (d) imprisonment for corrective training;
- (e) imprisonment for the prevention of crime;
- (f) declaration as an habitual criminal;
- (g) fine;
- (h) detention at a farm colony;
- (i) detention at an inebriate reformatory;
- (j) whipping;
- (k) putting the accused under recognizance with conditions.

(2) Save as is otherwise specially provided in this Act, nothing therein contained shall be construed—

- (a) as authorizing any court to impose for any offence any sentence other than, or in excess of, the sentence which by law it is competent for that court to impose for that offence; or
- (b) as derogating from the authority specially conferred on any court by any law to impose any other punishment or to impose any forfeiture in addition to any other punishment.”.

Amendment of section 330 of Act 56 of 1955.

25. Section *three hundred and thirty* of the principal Act is hereby amended by the insertion at the beginning thereof of the following sub-section, the existing section becoming sub-section (2):

“(1) Sentence of death may be passed by a superior court only and shall be passed by such a court upon a person convicted before or by it of murder, and may be passed by such a court upon a person convicted before or by it of treason or rape or robbery (including an attempt to commit robbery) if aggravating circumstances are found to have been present or any offence, either at common law or under any statute, of housebreaking or attempted housebreaking with intent to commit an offence, if aggravating circumstances are found to have been present: Provided that where a woman is convicted of the murder of her newly born child, or where a person under eighteen years of age is convicted of murder or where the jury, in convicting the accused of murder, expresses, in terms of sub-section (2) of section *one hundred and forty-one*, the opinion that there are extenuating circumstances, or in the case of a trial without a jury, where the court is of opinion that there are extenuating circumstances, the court may impose any sentence other than the death sentence.”.

Insertion of section 333bis in Act 56 of 1955.

26. The following section is hereby inserted in the principal Act after section *three hundred and thirty-three*:

“Interpretation of certain provisions in laws relating to imprisonment and fines.

333bis. (1) In construing any provision of any law (not being an Act of Parliament passed after the commencement of this section or anything enacted by virtue of powers conferred by such an Act), in so far as it prescribes or confers the power to prescribe a punishment for any offence, any reference in that law—

- (a) to imprisonment with or without any form of labour, shall be construed as a reference to imprisonment only;
- (b) to any period of imprisonment of less than three months which may not be exceeded in imposing or prescribing a sentence of imprisonment, shall be construed as a reference to a period of imprisonment of three months;
- (c) to any fine of less than twenty-five pounds, which may not be exceeded in imposing or prescribing a fine, shall, subject to the provisions of sub-section (2), be construed as a reference to a fine of twenty-five pounds.

(2) The provisions of paragraph (c) of sub-section (1) shall not apply in relation to any offence cognizable in the first instance only by a court which has no jurisdiction to impose a sentence of imprisonment.”.

Amendment of section 334 of Act 56 of 1955.

27. Section *three hundred and thirty-four* of the principal Act is hereby amended—

- (a) by the deletion in sub-section (1) of the words “and a person liable to a sentence of imprisonment, may be sentenced to imprisonment with or without compulsory labour,”;
- (b) by the deletion in sub-section (2) of the words “or imprisonment with compulsory labour, as distinguished from imprisonment with or without compulsory labour,”;
- (c) by the substitution for sub-section (3) of the following sub-section:

“(3) Notwithstanding anything to the contrary contained in any law, but subject to the provisions

- of sub-section (5), any court which sentences a person to a period of imprisonment without the option of a fine shall be competent to order that during that period or any portion thereof the imprisonment shall be on spare diet and in solitary confinement.”;
- (d) by the deletion in sub-section (4) of the words “whether with or without compulsory labour.”;
- (e) by the substitution for sub-section (5) of the following sub-section:

“(5) Save as provided in the laws relating to prisons and gaols, no person shall be sentenced to imprisonment on spare diet and in solitary confinement if the period of such imprisonment alone or together with any unexpired portion of any sentence of imprisonment without the option of a fine imposed on him would exceed six months.”.

Insertion of sections 334bis, 334ter and 334quat in Act 56 of 1955.

28. The following sections are hereby inserted in the principal Act after section *three hundred and thirty-four*:

“Periodical imprisonment. 334bis. (1) The provisions of this section shall apply only in such areas as the Minister may from time to time determine by notice in the *Gazette*.

(2) If a court convicts a person of any offence other than an offence specified in the Fourth Schedule or an offence in respect of which the imposition of a prescribed punishment on the person convicted thereof is compulsory, it may, in lieu of any other punishment, sentence such person to undergo in accordance with the laws relating to prisons and gaols, periodical imprisonment for a period of not less than one hundred hours and not exceeding one thousand hours.

(3) The court imposing a sentence of periodical imprisonment upon any person shall cause him to be furnished with a notice in writing in the prescribed form directing that he shall on a date and at a time specified in the notice or (if prevented from doing so by circumstances beyond his control) as soon as possible thereafter, surrender himself for the purpose of undergoing such imprisonment to the officer in charge of a place so specified within an area in which this section applies, whether within or outside the area of jurisdiction of the court.

(4) A copy of the said notice shall serve as a warrant for the reception into custody of the convicted person by the said officer.

(5) Any person who—

- (a) without lawful excuse, proof whereof shall be on such person, fails to comply with a notice issued under sub-section (3); or
- (b) surrenders himself for the purpose of undergoing periodical imprisonment, while under the influence of intoxicating liquor or narcotic drugs; or
- (c) impersonates or falsely represents himself to be a person who has been directed to surrender himself for the purpose of undergoing periodical imprisonment,

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

(6) If, before the expiration of any sentence of periodical imprisonment imposed upon any person for any offence, such person is undergoing a punishment of any other form of detention imposed by any court, any magistrate before whom such person is brought, shall set aside the unexpired portion of the sentence of periodical imprisonment and, after considering the evidence recorded in respect of such offence, may impose in lieu of such unexpired portion, any punishment within the limits of his punitive jurisdiction and of any punishment prescribed by any law as a punishment for such offence.

Imprisonment for corrective training.

334ter. (1) Subject to the provisions of sub-sections (2) and (3), a superior court or the court of a regional division which convicts a person of one or more offences, may, if it is satisfied that the said person requires training and treatment for his reformation, impose in lieu of any other punishment for such offence or offences, a sentence of imprisonment for corrective training.

(2) Subject to the provisions of sub-section (3), a superior court or a magistrate's court which convicts a person of an offence referred to in any Group of Part I of the Third Schedule in regard to which it has jurisdiction, is authorized and required to impose in lieu of any other punishment for such offence or that offence and any other offences of which the accused is simultaneously convicted, a sentence of imprisonment for corrective training—

- (a) if he is proved to have been ordered previously, before or after the commencement of this Act, either in the Union or elsewhere, to be sent to a reformatory as defined in section one of the Children's Act, 1937 (Act No. 31 of 1937), and to have been convicted previously, before or after the commencement of this Act, either in the Union or elsewhere, in respect of at least three charges for one or more of the offences included in such Group; or
- (b) if he is proved to have been sentenced previously, before or after the commencement of this Act, either in the Union or elsewhere, to imprisonment for periods of at least twelve months in the aggregate, as punishment (whether direct or alternative) for offences and if at least three of the charges for those offences are charges in respect of one or more of the offences included in such Group.

(3) A sentence of imprisonment for corrective training shall not be imposed—

- (a) on a person under the age of nineteen years; or
- (b) for an offence in respect of which it is compulsory to impose the death sentence or a sentence which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding four years; or
- (c) if in the opinion of the court the offence warrants the imposition of the death sentence or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding four years; or
- (d) if any unexpired period of imprisonment which the convicted person is undergoing exceeds two years.

(4) A person sentenced to imprisonment for corrective training shall be dealt with in accordance with the laws relating to prisons and gaols.

Imprisonment for the prevention of crime.

334*quat.* (1) Subject to the provisions of sub-sections (2) and (3), a superior court which convicts a person of an offence referred to in any Group of Part I of the Third Schedule may, if the said person is proved to have been convicted previously, before or after the commencement of this Act, either in the Union or elsewhere, of an offence included in such Group, impose in lieu of any other punishment for the first-mentioned offence or that offence and any other offences of which the accused is simultaneously convicted, a sentence of imprisonment for the prevention of crime.

(2) Subject to the provisions of sub-section (3), a superior court or the court of a regional division which convicts a person of an offence referred to in any Group of Part I of the Third Schedule in regard to which it has jurisdiction, is authorized and required to impose in lieu of any other punishment for such offence or that offence and any other offences of which the accused is simultaneously convicted, a sentence of imprisonment for the prevention of crime—

- (a) if he is proved to have been sentenced previously to imprisonment for corrective training for an offence included in such Group; or

(b) if he is proved to have been sentenced previously, before or after the commencement of this Act, either in the Union or elsewhere, to imprisonment for periods of at least thirty-six months in the aggregate, as punishment (whether direct or alternative) for offences and if at least three of the charges for those offences are charges in respect of one or more of the offences included in such Group.

(3) A sentence of imprisonment for the prevention of crime shall not be imposed—

(a) on a person under the age of nineteen years; or

(b) for an offence in respect of which it is compulsory to impose the death sentence or a sentence which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding eight years; or

(c) if in the opinion of the court the offence warrants the imposition of the death sentence or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding eight years; or

(d) if any unexpired period of imprisonment which the convicted person is undergoing exceeds four years.

(4) A person sentenced to imprisonment for the prevention of crime shall be dealt with in accordance with the laws relating to prisons and gaols.”.

Substitution of section 335 of Act 56 of 1955.

29. The following section is hereby substituted for section *three hundred and thirty-five* of the principal Act:

“Declara-
tion of
certain
persons as
habitual
criminals.

335. (1) Subject to the provisions of sub-sections (2) and (3), a superior court which convicts a person of one or more offences, may, if it is satisfied that the said person habitually commits offences, declare him an habitual criminal, in lieu of the imposition of any other punishment for the offence or offences of which he is convicted.

(2) Subject to the provisions of sub-section (3), a superior court or the court of a regional division which convicts a person of an offence referred to in any Group of Part I of the Third Schedule in regard to which it has jurisdiction, is authorized and required to declare the said person an habitual criminal, in lieu of the imposition of any other punishment for such offence or that offence and any other offences of which the accused is simultaneously convicted—

(a) if he is proved to have been sentenced previously to imprisonment for the prevention of crime for an offence included in such Group; or

(b) if he is proved to have been declared an habitual criminal previously, before or after the commencement of this Act, either in the Union or elsewhere; or

(c) if he is proved to have been sentenced previously, before or after the commencement of this Act, either in the Union or elsewhere, to imprisonment for periods of at least sixty months in the aggregate as punishment (whether direct or alternative) for offences and if at least three of the charges for these offences are charges in respect of one or more of the offences included in such Group.

(3) No person shall be declared an habitual criminal—

(a) if he is under the age of nineteen years; or

(b) for an offence in respect of which it is compulsory to impose the death sentence; or

(c) if in the opinion of the court the offence war-

rants the imposition of the death sentence or punishment which by itself or together with any punishment warranted or required in respect of any other offence of which the accused is simultaneously convicted, would entail imprisonment for a period exceeding fifteen years.

(4) A person declared an habitual criminal shall be dealt with in accordance with the laws relating to prisons and gaols."

Amendment of section 336 of Act 56 of 1955.

30. Section *three hundred and thirty-six* of the principal Act is hereby amended by the deletion in sub-section (1) of the words "with or without compulsory labour,".

Amendment of section 339 of Act 56 of 1955.

31. Section *three hundred and thirty-nine* of the principal Act is hereby amended by the deletion of the words "with or without compulsory labour".

Amendment of section 342 of Act 56 of 1955.

32. Section *three hundred and forty-two* of the principal Act is hereby amended by the substitution in sub-section (1) for the words "*three hundred and twenty-nine*" of the words "*three hundred and thirty*".

Substitution of section 344 of Act 56 of 1955.

33. The following section is hereby substituted for section *three hundred and forty-four* of the principal Act:

"Discretion of court in relation to whipping.

344. When any person may be sentenced by a court to a whipping, that punishment may be inflicted in addition to, or in substitution for, any other punishment to which he may otherwise be sentenced, and the number of strokes to be inflicted, not exceeding ten, shall, subject to the provisions of any other law, be in the discretion of the court which shall specify in the sentence the number of strokes which are to be inflicted."

Insertion of sections 344bis, 344ter and 344quat, in Act 56 of 1955.

34. The following sections are hereby inserted in the principal Act after section *three hundred and forty-four*:

"Sentence of whipping to be imposed by inferior courts in certain cases only.

344bis. Subject to the provisions of section *three hundred and forty-four ter*, whipping shall only be imposed by an inferior court—

(a) in the case of a first conviction for—

- (i) assault of an aggravated or indecent nature or with intent to do grievous bodily harm or with intent to commit any other offence;
- (ii) culpable homicide, bestiality or an act of gross indecency committed by one male person with another or any attempt to commit any such offence; or
- (iii) any statutory offence for which whipping may be imposed as a punishment, unless it is expressly provided that whipping shall only be imposed as a punishment on a second or subsequent conviction;

(b) in the case of a second or subsequent conviction for an offence committed within a period of three years after the former conviction.

Sentence of whipping shall be imposed for certain offences.

344ter. (1) Subject to the provisions of sub-section (2) and sections *three hundred and forty-four* and *three hundred and forty-six*, any person convicted of an offence mentioned in Part II of the Third Schedule shall be sentenced to whipping.

(2) The provisions of sub-section (1) shall not apply in relation to any person who is proved to have been sentenced previously to a whipping other than whipping referred to in section *three hundred and forty-five* or who is dealt with under section *three hundred and thirty-four ter*, *three hundred and thirty-four quat*, *three hundred and thirty-five*, *three hundred and forty-two* or *three hundred and forty-five*.

(3) The Minister may by notice in the *Gazette* add any offence to Part II of the Third Schedule, if a resolution authorizing him so to add such offence is passed by both Houses of Parliament.

Procedure when sentence of whipping by superior court prevented from being executed.

344quat. In any case in which a sentence by a superior court of whipping is wholly or partly prevented on grounds of health from being executed, the person sentenced to a whipping shall be kept in custody until that sentence is revised by the court which passed it or if that court is not sitting, by the provincial division concerned, and the court may in its discretion either remit the sentence of whipping or sentence such person, in lieu of whipping or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for a period not exceeding twelve months, which period of imprisonment may be in addition to any other punishment to which the person may have been sentenced for the same offence."

Amendment of section 346 of Act 56 of 1955.

35. Section *three hundred and forty-six* of the principal Act is hereby amended by the insertion in sub-section (1) after the word "female" of the words "and no person over the age of fifty years".

Amendment of section 347 of Act 56 of 1955.

36. Section *three hundred and forty-seven* of the principal Act is hereby amended by the substitution for the words "regulations made under the law governing prisons or gaols" of the words "laws governing prisons and gaols".

Amendment of section 348 of Act 56 of 1955.

37. Section *three hundred and forty-eight* of the principal Act is hereby amended by the substitution in sub-section (2) for the words "three months" of the words "one year" and for the words "one month" of the words "three months".

Amendment of section 352 of Act 56 of 1955.

38. Section *three hundred and fifty-two* of the principal Act is hereby amended—

(a) by the insertion after paragraph (a) of sub-section (1) of the following paragraph:

"(a)*bis* postpone the passing of sentence, release the person convicted and order that, within a period not exceeding three years specified by the court, he may be called upon by any magistrate to appear before him; or";

(b) by the insertion in paragraph (a) of sub-section (2) after the words "prescribed punishment" of the expression "(other than a punishment prescribed by section *three hundred and thirty-four ter, three hundred and thirty-four quat* or *three hundred and thirty-five*)" and by the deletion in the said sub-section of the expression "subject to the provisions of sub-section (2) of section *three hundred and thirty-five*";

(c) by the insertion in paragraph (a) of sub-section (3) after the words "whether as to" of the words "the entering by the accused into his own recognizances, with or without sureties, in the amount of such fine or such portion, for the payment of that amount or as to";

(d) by the addition at the end of sub-section (3) of the following paragraph:

"(c) If the conditions upon which any recognizance under paragraph (a) has been given are not observed by the person who gave it, the court may declare the recognizance to be forfeited and such declaration of forfeiture shall have the effect of a judgment in a civil action in that court: Provided that the provisions of this paragraph shall not apply in the event of any condition upon which a recognizance has been given, not having been observed by reason of the death of the person who gave it.";

(e) by the insertion after sub-section (4) of the following sub-section:

"(4)*bis.* If the convicted person has, at the end of the period within which he may in terms of an order under paragraph (a)*bis* of sub-section (1) be called upon to appear, not been so called upon, he shall be deemed to have been discharged with a caution under paragraph (d) of sub-section (1).";

(f) by the insertion after paragraph (a) of sub-section (6) of the following paragraph:

“(a)bis. A convicted person who has been called upon to appear before a magistrate in terms of an order under paragraph (a)bis of sub-section (1), may be arrested without warrant upon the order of a magistrate, and the magistrate before whom he appears may pass sentence upon him in respect of the offence of which he has been convicted.”.

Amendment of section 353 of Act 56 of 1955.

39. Section *three hundred and fifty-three* of the principal Act is hereby amended by the deletion of the words “with the consent of the person convicted,”.

Repeal of section 354 of Act 56 of 1955.

40. Section *three hundred and fifty-four* of the principal Act is hereby repealed.

Insertion of section 355ter in Act 56 of 1955.

41. The following section is hereby inserted in the principal Act after section *three hundred and fifty-five bis*:

“Amendment of Part I of Third Schedule.

355ter. (1) The Governor-General may from time to time by proclamation in the *Gazette* remove from or add to any Group of Part I of the Third Schedule any offence mentioned in the proclamation and may in like manner add any Group of offences to the said Part I.

(2) Any proclamations issued under sub-section (1) shall be laid on the Tables of both Houses of Parliament within fourteen days after promulgation thereof if Parliament is then in ordinary session or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

(3) If both Houses of Parliament by resolutions passed in the same session (being a session during which a proclamation has been laid on the Tables of both Houses of Parliament in terms of sub-section (2)) disapprove of any such proclamation or of any provision in any such proclamation, such proclamation or such provision thereof shall thereafter cease to be of force and effect to the extent to which it is so disapproved.”.

Amendment of section 356 of Act 56 of 1955.

42. Section *three hundred and fifty-six* of the principal Act is hereby amended by the substitution in paragraph (a) for the word “*fifty-two*” of the word “*fifty-three*”.

Amendment of section 371 of Act 56 of 1955.

43. Section *three hundred and seventy-one* of the principal Act is hereby amended by the insertion after the word “Act” of the words “or the laws relating to prisons and gaols”.

Amendment of section 374 of Act 56 of 1955.

44. Section *three hundred and seventy-four* of the principal Act is hereby amended by the deletion of the words “with or without compulsory labour”.

Amendment of section 390 of Act 56 of 1955.

45. Section *three hundred and ninety* of the principal Act is hereby amended by the addition at the end of sub-section (1) of the words “or which may be prescribed”.

Amendment of section 391 of Act 56 of 1955.

46. Section *three hundred and ninety-one* of the principal Act is hereby amended by the substitution in sub-section (1) for the word “Fifth” of the word “Sixth” and for the word “fourth” of the word “third”.

Amendment of the Third Schedule to Act 56 of 1955.

47. The Third Schedule to the principal Act is hereby amended—

(a) by the substitution for Part I of the following Part:

“PART I.

OFFENCES, ON CONVICTION WHEREOF THE OFFENDER SHALL IN CERTAIN CIRCUMSTANCES BE SENTENCED TO IMPRISONMENT FOR CORRECTIVE TRAINING UNDER SECTION *THREE HUNDRED AND THIRTY-FOUR TER* OR TO IMPRISONMENT FOR THE PREVENTION OF CRIME UNDER SECTION *THREE HUNDRED AND THIRTY-FOUR QUAT*, OR BE DECLARED AN HABITUAL CRIMINAL UNDER SECTION *THREE HUNDRED AND THIRTY-FIVE*.

Group I.

Murder.
Rape.
Culpable Homicide involving an assault.
Robbery.

Assault with intent to commit murder, rape, robbery or sodomy, or to do grievous bodily harm.
 Indecent assault.
 Arson.
 Malicious injury to property.
 Public violence.
 Sedition.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.

Group II.

Rape.
 Assault with intent to commit rape or sodomy.
 Indecent assault.
 Abduction.
 Incest.
 Bestiality.
 Sodomy.
 Criminal *injuria* which involves an indecent act.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.

Group III.

Breaking or entering any premises with intent to commit an offence, either under the common law or under any statutory provision.
 Receiving stolen property knowing it to have been stolen.
 Robbery.
 Theft.
 Extortion.
 Fraud.
 Forgery or uttering a forged instrument knowing it to be forged.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.

Group IV.

Abortion.
 Disposing of the body of a child with intent to conceal the fact of its birth.
 Abduction.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.

Group V.

Defeating or obstructing the course of justice.
 Perjury.
 Bribery.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.

Group VI.

Extortion.
 Bribery.
 Fraud.
 Forgery or uttering a forged instrument knowing it to be forged.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.

Group VII.

Treason.
 Sedition.
 Public violence.
 Any conspiracy, incitement or attempt to commit any of the offences in this Group.”;

(b) by the substitution for the heading to Part II of the following heading:

“OFFENCES, ON CONVICTION WHEREOF THE OFFENDER SHALL BE SENTENCED TO WHIPPING UNDER SECTION THREE HUNDRED AND FORTY-FOUR TER.”;

(c) by the deletion in Part II of all the words after the words "to have been stolen".

Amendment of Fourth Schedule to Act 56 of 1955.

48. The Fourth Schedule to the principal Act is hereby amended by the insertion in the heading thereto after the word "SECTION" of the words "*THREE HUNDRED AND THIRTY-FOUR BIS* OR SUB-SECTION (1) OF SECTION".

Insertion of Fifth Schedule in Act 56 of 1955, the existing Fifth Schedule becoming the Sixth Schedule.

49. The following Schedule is hereby inserted in the principal Act after the Fourth Schedule, the existing Fifth Schedule becoming the Sixth Schedule:

"Fifth Schedule.

RULES WHICH, IN TERMS OF SECTION *THREE HUNDRED AND THREETER*, SHALL BE OBSERVED WHEN TAKING PREVIOUS CONVICTIONS INTO ACCOUNT IN IMPOSING ANY SENTENCE.

1. (a) No previous conviction shall be taken into account in imposing any sentence on a convicted person, if a period of ten years has elapsed after the date of such conviction or the date of expiration of any unexpired period of imprisonment imposed on the convicted person, whichever is the later date, unless he is proved to have committed an offence during such period of ten years.
- (b) The expression 'unexpired period of imprisonment' in this rule means the aggregate of any periods of imprisonment imposed either before or on the date of the previous conviction and which would have had to be undergone at the time of the previous conviction, in the absence of payment of any fine and of remission of sentence and of suspension of any period of imprisonment.
2. Where there are more counts than one in any charge, a conviction on each count shall be treated as a separate conviction.
3. When an accused has been convicted of more offences than one on the same day, a conviction of each offence shall be treated as a separate conviction.
4. In calculating any period of imprisonment—
 - (a) twenty hours periodical imprisonment shall be equivalent to imprisonment for one day;
 - (b) one week shall be equivalent to seven days;
 - (c) thirty days shall be equivalent to one month;
 - (d) imprisonment for corrective training shall be equivalent to imprisonment for a period of two years;
 - (e) imprisonment for the prevention of crime shall be equivalent to imprisonment for a period of five years;
 - (f) declaration as an habitual criminal shall be equivalent to imprisonment for a period of nine years.
5. Whenever the date of commission of an offence has not been proved, the date alleged in the charge shall be deemed to be the date of commission of the offence, or if a period is alleged in the charge, the date of commencement of that period shall be deemed to be the date of commission of the offence."

Short title and commencement.

50. (1) This Act shall be called the Criminal Law Amendment Act, 1959, and shall, subject to the provisions of sub-section (2), come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

(2) Different dates may in terms of sub-section (1) be fixed in respect of the several provisions of this Act.