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PRESIDENT'S OFFICE

No. 1884. 20 November 1996

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

No. 86 of 1996: Criminal Procedure Amendment Act, 1996.

KANTOOR VAN DIE PRESIDENT

No. 1884. 20 November 1996

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

No. 86 van 1996: Strafproseswysigingswet, 1996

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 make further provision for the payment of admission of guilt fines; to make provision for an accused to be informed of his or her right to legal representation; to further regulate the transfer of a case to a court having jurisdiction; to further regulate the correction of a plea of guilty; to further regulate the committal of an accused for sentence by the regional court after trial in the magistrate's court; to provide that evidence may be given by means of closed circuit television or similar electronic media; to further regulate cross-examination and re-examination of witnesses; to further regulate the admissibility of certain evidence given by means of affidavits; to make provision for the proof of undisputed evidence in respect of an accused who is legally represented; to further regulate the admissibility of confessions; to make provision for admissions by the State; and to empower the court to limit unreasonable delays; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 6 November 1996.)

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

Insertion of section 57A in Act 51 of 1977

1. The following section is hereby inserted in the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), after section 57:

"Admission of guilt and payment of fine after appearing in court

57A. (1) If an accused who is alleged to have committed an offence has appeared in court and is—

(a) in custody awaiting trial on that charge and not on another more serious charge;

(b) released on bail under section 59 or 60; or

(c) released on warning under section 72,

the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again.

(2) Such notice shall contain—

(a) the case number;

(b) a certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered, as the case may be, the original of such notice to the accused and that he or she explained to the accused the import thereof; and

(c) the particulars and instructions contemplated in paragraphs *(a)* and *(b)* of section 56(1).

(3) The public prosecutor shall endorse the charge-sheet to the effect that a notice contemplated in this section has been issued and he or she or the peace officer, as the case may be, shall forthwith forward a duplicate original of the notice to the clerk of the court which has jurisdiction.

(4) The provisions of sections 55, 56(2) and (4) and 57(2) to (7), inclusive, shall apply *mutatis mutandis* to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.".

Amendment of section 73 of Act 51 of 1977

2. Section 73 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsections:

"(2A) Every accused shall—

(a) at the time of his or her arrest;

(b) when he or she is served with a summons in terms of section 54;

(c) when a written notice is handed to him or her in terms of section 56;

(d) when an indictment is served on him or her in terms of section 144(4)*(a)*;

(e) at his or her first appearance in court,

be informed of his or her right to be represented at his or her own expense by a legal adviser of his or her own choice and if he or she cannot afford legal representation, that he or she may apply for legal aid and of the institutions which he or she may approach for legal assistance.

(2B) Every accused shall be given a reasonable opportunity to obtain legal assistance.

(2C) If an accused refuses or fails to appoint a legal adviser of his or her own choice within a reasonable time and his or her failure to do so is due to his or her own fault, the court may, in addition to any order which it may make in terms of section 342A, order that the trial proceed without legal representation unless the court is of the opinion that that would result in substantial injustice, in which event the court may, subject to the Legal Aid Act, 1969 (Act No. 22 of 1969), order that a legal adviser be assigned to the accused at the expense of the State: Provided that the court may order that the costs of such representation be recovered from the accused: Provided further that the accused shall not be compelled to appoint a legal adviser if he or she prefers to conduct his or her own defence.".

Amendment of section 75 of Act 51 of 1977, as substituted by section 3 of Act 56 of 1979 and amended by section 9 of Act 33 of 1986

3. Section 75 of the principal Act is hereby amended by the addition of the following paragraph to subsection (2), the existing subsection becoming paragraph *(a)*:

"*(b)* If an accused appears in a magistrate's court and the prosecutor informs the court that he or she is of the opinion that the alleged offence is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court but not of the jurisdiction of a regional court, the court shall if so requested by the prosecutor refer the accused to the regional court for summary trial without the accused having to plead to the relevant charge.".

Amendment of section 106 of Act 51 of 1977

4. Section 106 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph:

"*(i)* that the prosecution may not be resumed or instituted owing to an order by a court under section 342A(3)*(c)*.".

Amendment of section 113 of Act 51 of 1977, as amended by section 8 of Act 5 of 1991

5. Section 113 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

"If the court at any stage of the proceedings under section 112(1)*(a)* or *(b)* or 112(2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or **[is satisfied]** if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution".

Amendment of section 116 of Act 51 of 1977, as amended by section 19 of Act 116 of 1993

6. Section 116 of the principal Act is hereby amended by the substitution in subsection (3) for the proviso to paragraph *(a)* of the following proviso:

"Provided that if the regional magistrate is of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice he or she may request the presiding officer in the magistrate's court to provide him or her with the reasons for the conviction and if, after considering such reasons, the regional magistrate is satisfied that the proceedings are in accordance with justice he or she may sentence the accused, but if he or she remains of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice he or she shall, without sentencing the accused, record the reasons for his or her opinion and transmit such reasons and the reasons of the presiding officer of the magistrate's court, together with the record of the proceedings in the magistrate's court, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as possible, lay the same in chambers before a judge who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him or her under section 303.".

Substitution of section 158 of Act 51 of 1977

7. The following section is hereby substituted for section 158 of the principal Act:

"Criminal proceedings to take place in presence of accused

158. (1) Except as otherwise expressly provided by this Act or any other law, all criminal proceedings in any court shall take place in the presence of the accused.

(2) *(a)* A court may, subject to section 153, on its own initiative or on application by the public prosecutor, order that a witness or an accused, if the witness or accused consents thereto, may give evidence by means of closed circuit television or similar electronic media.

(b) A court may make a similar order on the application of an accused or a witness.

(3) A court may make an order contemplated in subsection (2) only if facilities therefor are readily available or obtainable and if it appears to the court that to do so would—

(a) prevent unreasonable delay;

(b) save costs;

(c) be convenient;

(d) be in the interest of the security of the State or of public safety or in the interests of justice or the public; or

(e) prevent the likelihood that prejudice or harm might result to any person if he or she testifies or is present at such proceedings.

(4) The court may, in order to ensure a fair and just trial, make the giving of evidence in terms of subsection (2) subject to such conditions as it may deem necessary: Provided that the prosecutor and the accused have the right, by means of that procedure, to question a witness and to observe the reaction of that witness.".

Amendment of section 166 of Act 51 of 1977

8. Section 166 of the principal Act is hereby amended by the addition of the following subsection:

"(3) *(a)* If it appears to a court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the court may request the cross-examiner to disclose the relevancy of any particular line of examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination.

(b) The court may order that any submission regarding the relevancy of the cross-examination be heard in the absence of the witness.".

Amendment of section 212 of Act 51 of 1977, as amended by section 12 of Act 56 of 1979, sections 46 and 47 of Act 97 of 1986, section 11 of Act 5 of 1991 and section 40 of Act 122 of 1991

9. Section 212 of the principal Act is hereby amended by the addition to paragraph *(a)* of subsection (4) of the following further proviso:

"Provided further that if such affidavit or certificate contains an opinion, such affidavit or certificate shall be *prima facie* proof of that opinion if—

(i) the expertise of the declarant; and

(ii) the grounds on which the opinion is based,

can be determined from the affidadavit or certificate".

Insertion of section 212B in Act 51 of 1977

10. The following section is hereby inserted in the principal Act after section 212A:

"Proof of undisputed facts

212B. (1) If an accused has appointed a legal adviser and, at any stage during the proceedings, it appears to a public prosecutor that a particular fact or facts which must be proved in a charge against an accused is or are not in issue or will not be placed in issue in criminal proceedings against the accused, he or she may, notwithstanding section 220, forward or hand a notice to the accused or his or her legal adviser setting out that fact or those facts and stating that such fact or facts shall be deemed to have been proved at the proceedings unless notice is given that any such fact will be placed in issue.

(2) The first-mentioned notice contemplated in subsection (1) shall be sent by certified mail or handed to the accused or his or her legal adviser personally at least 14 days before the commencement of the criminal proceedings or the date set for the continuation of the proceedings or within such shorter period as may be condoned by the court or agreed upon by the accused or his or her legal adviser and the prosecutor.

(3) If any fact mentioned in such notice is intended to be placed in issue at the proceedings, the accused or his or her legal representative shall at least five days before the commencement or the date set for the continuation of the proceedings or within such shorter period as may be condoned by the court or agreed upon with the prosecutor deliver a notice in writing to that effect to the registrar or the clerk of the court, as the case may be, or orally notify the registrar or the clerk of the court to that effect in which case the registrar or the clerk of the court shall record such notice.

(4) If, after receipt of the first-mentioned notice contemplated in subsection (1), any fact mentioned in that notice is not placed in issue as contemplated in subsection (3), the court may deem such fact or facts, subject to the provisions of subsections (5) and (6), to have been sufficiently proved at the proceedings concerned.

(5) If a notice was forwarded or handed over by a prosecutor as contemplated in subsection (1), the prosecutor shall notify the court at the commencement of the proceedings of such fact and of the reaction thereto, if any, and the court shall thereupon institute an investigation into such of the facts which are not disputed and enquire from the accused whether he or she confirms the information given by the prosecutor and whether he or she understands his or her rights and the implications of the procedure and where the legal adviser of the accused replies to any question by the court under this section, the accused shall be required by the court to declare whether he or she confirms such reply or not.

(6) The court may on its own initiative or at the request of the accused order oral evidence to be adduced regarding any fact contemplated in subsection (4).".

Amendment of section 217 of Act 51 of 1977, as amended by section 13 of Act 56 of 1979

11. Section 217 of the principal Act is hereby amended by the substitution for paragraph *(a)* of subsection (1) of the following paragraph:

"*(a)* that a confession made to a peace officer, other than a magistrate or a justice who is not a member of the South African Police Service, or, in the case of a peace officer referred to in section 334, a confession made to such peace officer which relates to an offence with reference to which such peace officer is authorized to exercise any power conferred upon him or her under that section, shall not be admissible in evidence unless confirmed and reduced to writing in the presence of a magistrate or such justice; and".

Substitution of section 220 of Act 51 of 1977

12. The following section is hereby substituted for section 220 of the principal Act:

"Admissions

220. An accused or his or her legal adviser or the prosecutor may in criminal proceedings admit any fact placed in issue at such proceedings and any such admission shall be sufficient proof of such fact.".

Insertion of section 342A in Act 51 of 1977

13. The following section is hereby inserted in the principal Act after section 342:

"Unreasonable delays in trials

342A. (1) A court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness.

(2) In considering the question whether any delay is unreasonable, the court shall consider the following factors:

(a) The duration of the delay;

(b) the reasons advanced for the delay;

(c) whether any person can be blamed for the delay;

(d) the effect of the delay on the personal circumstances of the accused and witnesses;

(e) the seriousness, extent or complexity of the charge or charges;

(f) actual or potential prejudice caused to the State or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost;

(g) the effect of the delay on the administration of justice;

(h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;

(i) any other factor which in the opinion of the court ought to be taken into account.

(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order—

(a) refusing further postponement of the proceedings;

(b) granting a postponement subject to any such conditions as the court may determine;

(c) where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted *de novo* without the written instruction of the attorney-general;

(d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed;

(e) that—

(i) the State shall pay the accused concerned the wasted costs incurred by the accused as a result of an unreasonable delay caused by an officer employed by the State;

(ii) the accused or his or her legal adviser, as the case may be, shall pay the State the wasted costs incurred by the State as a result of an unreasonable delay caused by the accused or his or her legal adviser, as the case may be; or

(f) that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.

(4) *(a)* An order contemplated in subsection (3)*(a)*, where the accused has pleaded to the charge, and an order contemplated in subsection (3)*(d)*, shall not be issued unless exceptional circumstances exist and all other attempts to speed up the process have failed and the defence or the State, as the case may be, has given notice beforehand that it intends to apply for such an order.

(b) The attorney-general and the accused may appeal against an order contemplated in subsection (3)*(d)* and the provisions of sections 310A and 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals and, in the case of an appeal by the accused, the provisions of section 309 and 316 shall apply *mutatis mutandis*.

(5) Where the court has made an order contemplated in subsection (3)*(e)*—

(a) the costs shall be taxed according to the scale the court deems fit; and

(b) the order shall have the effect of a civil judgment of that court.

(6) If, on notice of motion, it appears to a superior court that the institution or continuance of criminal proceedings is being delayed unreasonably in a lower court which is seized with a case but does not have jurisdiction to try the case, that superior court may, with regard to such proceedings, institute the investigation contemplated in subsections (1) and (2) and issue any order contemplated in subsection (3) to the extent that it is applicable.".

Short title and commencement

14. This Act shall be called the Criminal Procedure Amendment Act, 1996, and shall come into operation on a date determined by the President by proclamation in the *Gazette*.