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# GOVERNMENT GAZETTE

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# STAATSKOERANT

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1171.

1 June 1979.

No. 1171.

1 Junie 1979.

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. 56 of 1979: Criminal Procedure Amendment Act, 1979.

No. 56 van 1979: Strafproseswysigingswet, 1979.

Act No. 56, 1979

CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

**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, to provide for the issuing of warrants for the further detention of certain persons; to make further provision for the designation of a court as a court of summary trial; to provide for the committal of accused to regional courts for trial; to include an accused released on bail or on warning in 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 extend the powers of attorneys-general with regard to a plea in a magistrate's court on a charge justiciable in a superior court; to provide for persons to plead in magistrates' courts on charges to be adjudicated in regional courts; to make it an offence for an accused released on warning to fail to appear at adjourned proceedings; to make further provision for the proof of certain facts by means of affidavits and for the admissibility of confessions and admissions; to increase the awards that regional courts and magistrates' courts may make by way of compensation for damage or loss caused by an offence; to extend certain bail provisions to bail pending review; to redefine "local authority" in Schedule 3; and to effect certain textual alterations; and to provide for incidental matters.

*(English text signed by the State President.)*  
*(Assented to 21 May 1979.)*

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

Amendment of  
section 50 of  
Act 51 of 1977.

1. Section 50 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the addition of the following paragraph to the proviso to subsection (1):

“(d) or will expire at, or if the time at which such period is deemed to expire under paragraph (a), (b) or (c) is or will be, a time when the arrested person cannot, because of his physical illness or other physical condition, be brought before a lower court for the purposes of an order for his further detention, the court before which he would, but for the illness or other condition, have been brought for the purposes of such an order, may, upon the application of the prosecutor, which, if not made before the expiration of the period of forty-eight hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances

Act No. 56, 1979

## CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

relating to the illness or other condition are set out, supported by a certificate of a medical practitioner, order that the arrested person be detained at a place specified by the court and for such period as the court may deem necessary so that he may recuperate and be brought before the court for the purpose of an order for his further detention for the purposes of his trial."

Amendment of section 60 of Act 51 of 1977.

2. Section 60 of the principal Act is hereby amended by the substitution in subsection (2) for the expression "paragraph (a)" of the expression "subsection (1)".

Substitution of section 75 of Act 51 of 1977.

3. The following section is hereby substituted for section 75 of the principal Act:

"Summary trial and court of trial.

75. (1) When an accused is to be tried in a court in respect of an offence, he shall, subject to the provisions of sections 119, 122A and 123, be tried at a summary trial in—

- (a) the a court having which has jurisdiction and in which he appeared for the first time in respect of such offence in accordance with any method referred to in section 38;
- (b) a court which has jurisdiction and to which he was referred to under subsection (2); or
- (c) any other court which has jurisdiction and which has been designated by the attorney-general for the purposes of such summary trial.

(2) If an accused is under section 50 brought before appears in a court which does not have jurisdiction to try the case, the accused shall at the request of the prosecutor be referred to a court having jurisdiction."

Insertion of section 115A in Act 51 of 1977.

4. The principal Act is hereby amended by the insertion after section 115 of the following section:

"Committal of accused for trial by regional court.

115A. (1) Where an accused pleads not guilty in a magistrate's court, the court shall, subject to the provisions of section 115, at the request of the prosecutor made before any evidence is tendered, refer the accused for trial to a regional court having jurisdiction.

(2) The record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court."

Amendment of section 119 of Act 51 of 1977.

5. The principal Act is hereby amended by the substitution for section 119 of the following section:

"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, 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."

## Act No. 56, 1979

## CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

Amendment of section 121 of Act 51 of 1977.

6. Section 121 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) If the magistrate is satisfied as provided in subsection (2) (a), he shall adjourn the proceedings pending the decision of the attorney-general, who may—
- (a) arraign the accused for sentence before a superior court or any other court having jurisdiction, including the magistrate’s court in which the proceedings were stopped under subsection (2) (a);
- (b) decline to arraign the accused for sentence before any court but arraign him for trial on any charge at a summary trial before a superior court or any other court having jurisdiction, including the magistrate’s court in which the proceedings were stopped under subsection (2) (a);
- (c) institute a preparatory examination against the accused.”

Insertion of Chapter 19A and sections 122A, 122B, 122C and 122D in Act 51 of 1977.

7. The principal Act is hereby amended by the insertion immediately after section 122 of the following chapter and sections:

“CHAPTER 19A

PLEA IN MAGISTRATE’S COURT ON CHARGE TO BE ADJUDICATED IN REGIONAL COURT

Accused to plead in magistrate’s court on charge to be tried in regional court.

122A. 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, and the alleged offence may be tried by a regional court but not by a magistrate’s court or the prosecutor informs the court that he 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 prosecutor may, notwithstanding the provisions of section 75, put the relevant charge to the accused, who shall, subject to the provisions of sections 77 and 85, be required by the magistrate to plead to the charge forthwith.

Charge-sheet and proof of record.

122B. The provisions of section 120 shall *mutatis mutandis* apply with reference to the proceedings under section 122A and the record of the proceedings.

Plea of guilty.

122C. (1) Where an accused under section 122A pleads guilty to the offence charged, the presiding magistrate shall question him in terms of the provisions of paragraph (b) of section 112 (1).

(2) (a) If the magistrate is satisfied that the accused admits the allegations stated in the charge, he shall adjourn the case for sentence by the regional court concerned.

(b) If the magistrate is not satisfied as provided in paragraph (a), he shall record in what respect he is not so satisfied and enter a plea of not guilty and deal with the matter in terms of section 122D (1): Provided that an allegation with reference to which the magistrate is so satisfied and which has been recorded as an admission, shall stand at the trial of the accused as proof of such allegation.

Act No. 56, 1979

## CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

(3) (a) The record of the proceedings in the magistrate's court shall, upon proof thereof in the regional court in which the accused is arraigned for sentence, be received as part of the record of that court against the accused, and the plea of guilty and any admission by the accused shall stand and form part of the record of that court unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(b) Unless the accused satisfies the court that the plea of guilty or an admission was incorrectly recorded or unless the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court may convict the accused on his plea of guilty of the offence to which he has pleaded guilty, and impose any competent sentence.

(4) If the accused satisfies the court that the plea of guilty or an admission which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence to which he has pleaded guilty or that the accused has no valid defence to the charge, the court shall record a plea of not guilty and proceed with the trial as a summary trial in that court: Provided that an admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(5) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purpose of determining an appropriate sentence.

Plea of not guilty.

122D. (1) Where an accused under section 122A pleads not guilty to the offence charged, the court shall act in terms of section 115 and when that section has been complied with, the magistrate shall commit the accused for a summary trial in the regional court concerned on the charge to which he has pleaded not guilty or on the charge in respect of which a plea of not guilty has been entered under section 122C (2) (b).

(2) The regional court may try the accused on the charge in respect of which he has been committed for a summary trial under subsection (1) or on any other or further charge which the prosecutor may prefer against the accused and which the court is competent to try.

(3) The record of proceedings in the magistrate's court shall, upon proof thereof in the regional court in which the accused is arraigned for a summary trial, be received as part of the record of that court against the accused, and any admission by the accused shall stand at the trial of the accused as proof of such an admission."

Amendment of section 123 of Act 51 of 1977.

8. Section 123 of the principal Act is hereby amended by the substitution in paragraph (a) for the expression "122 (1)" of the expression "121 (3) or 122 (1)".

Amendment of section 124 of Act 51 of 1977.

9. Section 124 of the principal Act is hereby amended by the substitution in paragraph (a) for the expression "122 (1)" of the expression "121 (1) or 122 (1)".

65

Act No. 56, 1979

## CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

Amendment of  
section 144 of  
Act 51 of 1977.

## 10. Section 144 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Where an attorney-general arraigns an accused  
 [(a) under section 75 or 122 (2) (i) for a summary 5  
 trial by a superior court;  
 (b) under section 121 (4) for sentence by a superior  
 court; or  
 (c) under section 139] for sentence or trial by a

superior court, the charge shall be contained in a 10  
 document called an indictment, which shall be  
 framed in the name of the attorney-general.”; and  
 (b) by the substitution in subsection (3) (a) for the  
 expression “75 or 122 (2) (i)” of the expression “75,  
 121 (3) (b) or 122 (2) (i)”. 15

Amendment of  
section 170 of  
Act 51 of 1977.

## 11. Section 170 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An accused at criminal proceedings who is not in  
 custody and who has not been released on bail [or on  
 warning], and who fails to appear at the place and on the 20  
 date and at the time to which such proceedings may be  
 adjourned, shall be guilty of an offence and liable to the  
 punishment prescribed under subsection (2).”

Amendment of  
section 212 of  
Act 51 of 1977.

## 12. Section 212 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 25

“(3) Whenever in criminal proceedings the question arises  
 whether any matter has been registered under any law or  
 whether any fact or transaction has been recorded thereunder  
 or whether anything connected therewith has been done  
 thereunder, a document purporting to be an affidavit made by 30  
 a person who in that affidavit alleges that he is the person  
 upon whom the law in question confers the power or  
 imposes the duty to register such matter or to record such fact  
 or transaction or to do such thing connected therewith and  
 that he has registered the matter in question or that he has 35  
 recorded the fact or transaction in question or that he has  
 done the thing connected therewith or that he has satisfied  
himself that the matter in question was registered or that the  
fact or transaction in question was recorded or that the thing  
connected therewith was done, shall, upon its mere produc- 40  
 tion at such proceedings, be *prima facie* proof that such  
 matter was registered or, as the case may be, that such fact or  
 transaction was recorded or that the thing connected there-  
 with was done.”

Amendment of  
section 217 of  
Act 51 of 1977.

## 13. Section 217 of the principal Act is hereby amended by the 45 substitution for subparagraph (i) of paragraph (b) of subsection (1) of the following subparagraph:

“(i) be admissible in evidence against such person if it  
 appears from the document in which the confession is  
 contained that the confession was made by a person 50  
 whose name corresponds to that of such person and, in  
 the case of a confession made to a magistrate or  
 confirmed in the presence of a magistrate through an  
 interpreter, if a certificate by the interpreter appears on  
 such document to the effect that he interpreted truly and 55  
 correctly and to the best of his ability with regard to the  
 contents of the confession and any question put to such  
person by the magistrate; and”

Act No. 56, 1979

## CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

Insertion of section 219A in Act 51 of 1977.

14. The following section is hereby inserted in the principal Act after section 219:

“Admissibility of admission by accused.

**219A. (1)** Evidence of any admission made extra-judicially by any person in relation to the commission of an offence shall, if such admission does not constitute a confession of that offence and is proved to have been voluntarily made by that person, be admissible in evidence against him at criminal proceedings relating to that offence: Provided that where the admission is made to a magistrate and reduced to writing by him or is confirmed and reduced to writing in the presence of a magistrate, the admission shall, upon the mere production at the proceedings in question of the document in which the admission is contained—

(a) be admissible in evidence against such person if it appears from such document that the admission was made by a person whose name corresponds to that of such person and, in the case of an admission made to a magistrate or confirmed in the presence of a magistrate through an interpreter, if a certificate by the interpreter appears on such document to the effect that he interpreted truly and correctly and to the best of his ability with regard to the contents of the admission and any question put to such person by the magistrate; and

(b) be presumed, unless the contrary is proved, to have been voluntarily made by such person if it appears from the document in which the admission is contained that the admission was made voluntarily by such person.

(2) The prosecution may lead evidence in rebuttal of evidence adduced by an accused in rebuttal of the presumption under subsection (1).”

Amendment of section 296 of Act 51 of 1977.

15. Section 296 of the principal Act is hereby amended by the addition of the following subsection, while the existing section becomes subsection (1):

“(2) In applying the provisions of this section with reference to a Coloured person as defined in the Coloured Persons Rehabilitation Centres Law, 1971, of the Coloured Persons Representative Council of the Republic of South Africa (Law 1 of 1971), any reference to a provision of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, shall be construed as a reference to a corresponding provision of the said Coloured Persons Rehabilitation Centres Law, 1971.”

Amendment of section 300 of Act 51 of 1977.

16. Section 300 of the principal Act is hereby amended by the substitution for paragraph (a) of the proviso to subsection (1) of the following paragraph:

“(a) a regional court or a magistrate’s court shall not make any such award if the compensation applied for exceeds two ten thousand rand or one thousand five hundred rand, respectively;”

Amendment of section 307 of Act 51 of 1977.

17. Section 307 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The provisions of sections 63, 64, 65, 66, 67 and 68 shall *mutatis mutandis* apply with reference to the granting of bail pending review.”

Act No. 56, 1979

CRIMINAL PROCEDURE AMENDMENT ACT, 1979.

Amendment of  
Schedule 3 to  
Act 51 of 1977.

18. Schedule 3 to the principal Act is hereby amended by the substitution for the words "a local authority referred to in section 341" of the words "any council, board or committee established in terms of any law for the management of the affairs of any division, city, town, borough, village or other similar community". 5

Short title.

19. This Act shall be called the Criminal Procedure Amendment Act, 1979.