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THE PRESIDENCY

No. 786 **28 January 2022**

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

Act No. 12 of 2021: Criminal and Related Matters Amendment Act, 2021

DIE PRESIDENSIE

No. 786 **28 Januarie 2022**

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

Wet No. 12 van 2021: Wysigingswet op die Strafreg en Verwante Aangeleenthede, 2021

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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.

(English text signed by the President)
(Assented to 25 January 2022)

ACT

To amend—

- **the Magistrates' Courts Act, 1944, so as to provide for the appointment of intermediaries and the giving of evidence through intermediaries in proceedings other than criminal proceedings; the oath and competency of intermediaries; and the giving of evidence through audiovisual link in proceedings other than criminal proceedings;**
- **the Criminal Procedure Act, 1977, so as to further regulate the granting and cancellation of bail; the giving of evidence by means of closed circuit television or similar electronic media; the giving of evidence by a witness with physical, psychological or mental disability; the appointment, oath and competency of intermediaries; and the right of a complainant in a domestic related offence to participate in parole proceedings;**
- **the Criminal Law Amendment Act, 1997, so as to further regulate sentences in respect of offences that have been committed against vulnerable persons; and**
- **the Superior Courts Act, 2013, so as to provide for the appointment of intermediaries and the giving of evidence through intermediaries in proceedings other than criminal proceedings; the oath and competency of intermediaries; and the giving of evidence through audiovisual link in proceedings other than criminal proceedings,**

and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Insertion of sections 51A, 51B and 51C in Act 32 of 1944

1. The following sections are hereby inserted after section 51 of the Magistrates' Courts Act, 1944:

ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
_____	Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 25 Januarie 2022)

WET

Tot wysiging van—

- **die Wet op Landdroshowe, 1944, ten einde voorsiening te maak vir die aanstelling van tussengangers en die aflê van getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie; die eed en bevoegdheid van tussengangers; en die aflê van getuienis deur oudiovisuele skakel in verrigtinge wat nie strafregtelike verrigtinge is nie;**
- **die Strafproseswet, 1977, ten einde die toestaan en intrekking van borgtog; die aflê van getuienis by wyse van geslotekringtelevisie of soortgelyke elektroniese media; die aflê van getuienis deur 'n getuie met fisieke, sielkundige of verstandelike gestremdheid; die aanstelling, eed en bevoegdheid van tussengangers; en die reg van 'n klaer in 'n gesinsverwante misdryf om aan paroolverrigtinge deel te neem, verder te reël;**
- **die Strafregwysigingswet, 1997, ten einde vonnisse ten opsigte van misdrywe wat teen trefbare persone gepleeg is, verder te reël; en**
- **die Wet op Hoër Howe, 2013, ten einde voorsiening te maak vir die aanstelling van tussengangers en die aflê van getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie; die eed en bevoegdheid van tussengangers; en die aflê van getuienis deur oudiovisuele skakel in verrigtinge wat nie strafregtelike verrigtinge is nie,**

en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DIE PARLEMENT van die Republiek van Suid-Afrika verorden, soos volg:—

Invoeging van artikels 51A, 51B en 51C in Wet 32 van 1944

1. Die volgende artikels word hierby na artikel 51 van die Wet op Landdroshowe, 1944, ingevoeg:

"**Evidence through intermediaries in proceedings other than criminal proceedings**

51A. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness—

(a) under the biological or mental age of 18 years;

(b) who suffers from a physical, psychological, mental or emotional condition; or

(c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006),

to give his or her evidence through that intermediary, if it appears to that court that the proceedings would expose such a witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings.

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

(b) The 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 in terms of subsection (1), the court may direct that the relevant witness gives his or her evidence at any place—

(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, the intermediary, as well as the witness, during his or her testimony.

(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.

(b) An intermediary appearing at proceedings in terms of this section who is not in the full-time employment of the State must be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as prescribed by the rules made by the Rules Board for Courts of Law under the Rules Board for Courts of Law Act, 1985.

(5) *(a)* A court must provide reasons for refusing any application for the appointment of an intermediary, immediately upon refusal, which reasons must be entered into the record of the proceedings.

(b) A court may, on application by a party affected by the refusal contemplated in paragraph *(a)*, and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced that refusal, review its decision.

(6) An intermediary referred to in subsection (1) may be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.

(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court, is absent for any reason, becomes unable, in the opinion of the court, to act as an intermediary or dies, the court may, in the interests of justice and after due consideration of the arguments put forward by the parties—

(a) postpone the proceedings in order to obtain the intermediary's presence;

(b) summons the intermediary to appear before the court to advance reasons for being absent;

(c) direct that the appointment of the intermediary be revoked and appoint another intermediary; or

"**Getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie**

51A. (1) 'n Hof kan, op aansoek deur enige party tot verrigtinge ingevolge Deel II van hierdie Wet voor die hof, of uit eie beweging en behoudens subartikel (4), 'n bevoegde persoon as tussenganger aanstel ten einde 'n getuie—

(a) onder die biologiese of verstandsouderdom van 18 jaar;

(b) wat aan 'n fisiese, sielkundige, verstandelike of emosionele toestand ly; of

(c) wat 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act', 2006 (Wet No. 13 van 2006), as 'older person' omskryf,

in staat te stel om sy of haar getuienis deur bemiddeling van daardie tussenganger af te lê, indien dit vir daardie hof blyk dat die verrigtinge so 'n getuie aan onnodige sielkundige, verstandelike of emosionele spanning, trauma of lyding sal blootstel indien hy of sy by daardie verrigtinge getuienis aflê.

(2) *(a)* Geen ondervraging, kruisondervraging of herondervraging van enige getuie ten opsigte van wie 'n hof 'n tussenganger aangestel het, behalwe ondervraging deur die hof, mag op enige wyse anders as deur bemiddeling van daardie tussenganger plaasvind nie.

(b) Die tussenganger kan, tensy die hof anders gelas, die algemene strekking van enige vraag aan die tersaaklike getuie oordra.

(3) Indien 'n hof 'n tussenganger ingevolge subartikel (1) aanstel, kan die hof gelas dat die tersaaklike getuie sy of haar getuienis op enige plek lewer—

(a) wat informeel ingerig is om daardie getuie op sy of haar gemak te stel;

(b) wat so geleë is dat enige persoon wie se teenwoordigheid daardie getuie kan ontstel, buite sig en hoorafstand van daardie getuie is; en

(c) wat die hof en enige persoon wie se teenwoordigheid by die tersaaklike verrigtinge nodig is, in staat stel om die tussenganger, sowel as die getuie te sien en te hoor gedurende sy of haar getuienis, hetsy regstreeks of deur enige elektroniese of ander toestelle.

(4) *(a)* Die Minister kan, by kennisgewing in die *Staatskoerant*, die persone of die kategorie of klas persone wat bevoeg is om as tussengangers aangestel te word, bepaal.

(b) 'n Tussenganger wat by verrigtinge verskyn ingevolge hierdie artikel en wat nie voltyds in diens van die Staat is nie, moet sodanige reis- en onderhoud- en ander toelae betaal word ten opsigte van die dienste wat hy of sy lewer, soos voorgeskryf deur die reëls deur die Reëlsraad vir Geregshowe kragtens die Wet op die Reëlsraad vir Geregshowe, 1985, gemaak.

(5) *(a)* 'n Hof moet redes verstrek vir die weiering van enige aansoek om die aanstelling van 'n tussenganger, onmiddellik by weiering, welke redes op die rekord van verrigtinge geplaas moet word.

(b) 'n Hof kan, op aansoek van 'n party wat deur die weiering beoog in paragraaf *(a)* geraak word, en indien die hof oortuig is dat daar 'n wesenlike verandering is ten opsigte van enige feit of omstandigheid wat daardie weiering beïnvloed het, sy beslissing hersien.

(6) 'n Tussenganger beoog in subartikel (1), kan gedagvaar word om op 'n gespesifiseerde datum en op 'n gespesifiseerde plek en tyd voor die hof te verskyn om as 'n tussenganger op te tree.

(7) Indien, by die aanvang of op enige stadium voor die afhandeling van die betrokke verrigtinge, 'n tussenganger deur die hof aangestel om enige rede afwesig is, na die oordeel van die hof onbekwaam raak om as tussenganger op te tree of sterf, kan die hof, in die belang van geregtigheid en na behoorlike oorweging van die betoë deur die partye gelewer—

(a) die verrigtinge uitstel ten einde die tussenganger se teenwoordigheid te bekom;

(b) die tussenganger dagvaar om voor die hof te verskyn om redes vir sy of haar afwesigheid te verskaf;

(c) gelas dat die aanstelling van die tussenganger ingetrek word en 'n ander tussenganger aanstel; of

(d) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary.

(8) The court must immediately give reasons for any direction or order referred to in subsection (7)*(c)* or *(d)*, which reasons must be entered into the record of the proceedings.

Oath and competency of intermediaries

51B. (1) Subject to subsection (3), any person who is competent to be appointed as an intermediary in terms of section 51A(4)*(a)* must, before commencing with his or her functions in terms of section 51A, take an oath or make an affirmation subscribed by him or her, in the form set out below, before the magistrate presiding over the proceedings:

'I, ..., do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall truly and correctly, to the best of my knowledge and ability—

(a) perform my functions as an intermediary; and

(b) convey, properly and accurately, all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court'.

(2) *(a)* Subject to subsection (3), before a person is appointed to perform the functions of an intermediary in a magistrate's court for any district or for any regional division, the magistrate presiding over the proceedings must enquire into the competence of the person to be appointed as an intermediary.

(b) The enquiry contemplated in paragraph *(a)* must include, but is not limited to, the person's—

(i) fitness as a person to be an intermediary;

(ii) experience, which has a bearing on the role and functions of an intermediary;

(iii) qualifications;

(iv) knowledge, which has a bearing on the role and functions of an intermediary;

(v) language and communication proficiency; and

(vi) ability to interact with a witness under the biological or mental age of 18 years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006).

(3) *(a)* The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (2), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in a magistrate's court for a district or for a regional division.

(b) Before the head of a court issues a certificate referred to in paragraph *(a)*, he or she must cause the person who has been found competent to be appointed as an intermediary, to take the oath or make the affirmation referred to in subsection (1) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

(c) A certificate contemplated in paragraph *(a)* may be accepted as proof of the—

(i) competency of a person to be appointed as an intermediary; and

(ii) fact that the person has taken the oath or made the affirmation contemplated in subsection (1),

for purposes of this section, in any subsequent proceedings in terms of this Act, before a magistrate's court for a district or for a regional division and it is not necessary for the magistrate presiding over the proceedings in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary.

(d) gelas dat die aanstelling van die tussenganger ingetrek word en dat die verrigtinge in die afwesigheid van 'n tussenganger voortgaan.

(8) Die hof moet onmiddellik redes verskaf vir enige lasgewing of bevel in subartikel (7)*(c)* of *(d)* bedoel, welke redes op die rekord van verrigtinge geplaas moet word.

Eed en bevoegdheid van tussengangers

51B. (1) Behoudens subartikel (3), moet enige persoon wat bevoeg is om ingevolge artikel 51A(4)*(a)* as tussenganger aangestel te word, voordat hy of sy die werksaamhede ingevolge artikel 51A opneem, 'n eed of plegtige verklaring, deur hom of haar onderteken, in die onderstaande vorm, aflê voor die landdros wat oor die verrigtinge voorsit:

'Ek, ..., verklaar hierby onder eed/plegtig en opreg dat, wanneer ek ook al gevra mag word om die werksaamhede van 'n tussenganger te verrig, ek waar en korrek, na die beste van my kennis en vermoë—

(a) my werksaamhede as 'n tussenganger sal verrig; en

(b) alle vrae aan getuies gestel behoorlik en akkuraat sal oordra en, waar nodig, die algemene strekking van enige vraag aan die getuie sal oordra, tensy andersins deur die hof gelas'.

(2) *(a)* Behoudens subartikel (3), voordat 'n persoon aangestel word om die werksaamhede van 'n tussenganger in 'n landdroshof vir enige distrik of vir enige streeksafdeling te verrig, moet die landdros wat by die verrigtinge voorsit, ondersoek doen na die bevoegdheid van die persoon om as 'n tussenganger aangestel te word.

(b) Die ondersoek beoog in paragraaf *(a)*, moet insluit, maar is nie beperk nie tot, die persoon se—

(i) geskiktheid, as 'n persoon, om 'n tussenganger te wees;

(ii) ervaring, wat betrekking het op die rol en werksaamhede van 'n tussenganger;

(iii) kwalifikasies;

(iv) kennis, wat betrekking het op die rol en werksaamhede van 'n tussenganger;

(v) taal- en kommunikasievaardighede; en

(vi) vermoë om met 'n getuie onder die biologiese of verstandsouderdom van 18 jaar of 'n getuie wat aan 'n fisieke, sielkundige, verstandelike of emosionele toestand ly, of 'n getuie wat 'n ouer persoon is, soos in artikel 1 van die 'Older Persons Act, 2006' (Wet No. 13 van 2006), as 'older person' omskryf, te werk.

(3) *(a)* Die hoof van 'n hof kan, na goeddunke en nadat 'n ondersoek beoog in subartikel (2) gedoen is, 'n sertifikaat in die vorm deur die Minister by kennisgewing in die *Staatskoerant* voorgeskryf, uitreik aan 'n persoon wat hy of sy bevoeg bevind het om as 'n tussenganger in 'n landdroshof vir 'n distrik of vir 'n streeksafdeling te verskyn.

(b) Voordat die hoof van 'n hof 'n sertifikaat bedoel in paragraaf *(a)* uitreik, moet hy of sy die persoon wat bevoeg bevind is om as 'n tussenganger aangestel te word, die eed of 'n plegtige verklaring bedoel in subartikel (1) laat aflê en die sertifikaat endosseer met 'n verklaring van die feit dat dit afgeneem of gemaak is voor hom of haar en van die datum waarop dit aldus afgeneem of gemaak is en sy of haar handtekening daarop aanbring.

(c) 'n Sertifikaat beoog in paragraaf *(a)* kan aanvaar word as bewys van die—

(i) bevoegdheid van 'n persoon om as tussenganger aangestel te word; en

(ii) feit dat die persoon die eed of plegtige verklaring afgelê het soos in subartikel (1) beoog,

by die toepassing van hierdie artikel, in enige daaropvolgende verrigtinge ingevolge hierdie Wet, voor 'n landdroshof vir 'n distrik of vir 'n streeksafdeling en is dit nie nodig vir die landdros wat oor die betrokke verrigtinge voorsit, om die eed of plegtige verklaring af te neem nie of om 'n ondersoek te doen na die bevoegdheid van 'n persoon om as 'n tussenganger aangestel te word nie.

(d) Paragraph *(c)* must not be construed as prohibiting a magistrate from holding an enquiry, at any stage of proceedings, regarding the competence of a person to act as an intermediary.

(e) For the purposes of this section, 'head of a court' means the most senior judicial officer of that court.

Evidence through audiovisual link in proceedings other than criminal proceedings

51C. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before that court or of its own accord, order that a witness, irrespective of whether the witness is in or outside the Republic, if the witness consents thereto, may give evidence by means of audiovisual link.

(2) A court may make an order contemplated in subsection (1) only if—

(a) it appears to the court that to do so would—

(i) *(aa)* prevent unreasonable delay;

(bb) save costs;

(cc) be convenient; or

(dd) prevent the likelihood that any person might be prejudiced or harmed if he or she testifies or is present at such proceedings; and

(ii) otherwise be in the interests of justice;

(b) facilities thereof are readily available or obtainable at the court; and

(c) the audiovisual link that is used by the witness or at the court enables—

(i) persons at the courtroom to see, hear and interact with the witness giving evidence; and

(ii) the witness who gives evidence to see, hear and interact with the persons at the courtroom.

(3) The court may make the giving of evidence in terms of subsection (1) subject to such conditions as it may deem necessary in the interests of justice.

(4) The court must provide reasons for—

(a) allowing or refusing an application by any of the parties; or

(b) its order and any objection raised by the parties against the order,

as contemplated in subsection (1).

(5) For purposes of this Act, a witness who gives evidence by means of audiovisual link is regarded as a witness who was subpoenaed to give evidence in the court in question.

(6) For purposes of this section 'audiovisual link' means facilities that enable both audio and visual communications between a witness and persons at a courtroom in real-time as they take place.''.

Amendment of section 59 of Act 51 of 1977, as substituted by section 3 of Act 26 of 1987, section 1 of Act 126 of 1992 and section 2 of Act 75 of 1995

2. Section 59 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* An accused who is in custody in respect of any offence, other than an offence—

(i) referred to in Part II or Part III of Schedule 2;

(ii) against a person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998); or

(iii) referred to in—

(aa) section 17(1)*(a)* of the Domestic Violence Act, 1998;

(bb) section 18(1)*(a)* of the Protection from Harassment Act, 2011 (Act No. 17 of 2011); or

(cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

(d) Paragraaf *(c)* moet nie uitgelê word nie dat dit 'n landdros sou verbied om 'n ondersoek te doen, te eniger tyd tydens die verrigtinge, na die bevoegdheid van 'n persoon om as 'n tussenganger op te tree.

(e) By die toepassing van hierdie artikel, beteken 'hoof van 'n hof' die mees senior regterlike beampte van daardie hof.

Getuienis deur oudiovisuele skakel in verrigtinge wat nie strafregtelike verrigtinge is nie

51C. (1) 'n Hof kan, op aansoek deur enige party tot verrigtinge ingevolge Deel II van hierdie Wet voor daardie hof of uit eie beweging, gelas dat 'n getuie, hetsy daardie getuie binne of buite die Republiek is, indien die getuie daartoe toestem, by wyse van oudiovisuele skakel mag getuig.

(2) 'n Hof kan slegs 'n bevel bedoel in subartikel (1) gee indien—

(a) dit vir die hof blyk dat om dit aldus te doen dit—

(i) *(aa)* onredelike vertraging sal voorkom;

(bb) koste sal bespaar;

(cc) gerieflik sal wees; of

(dd) die waarskynlikheid sal voorkom dat enige persoon benadeel of leed aangedoen kan word as hy of sy by sodanige verrigtinge getuig of teenwoordig is; en

(ii) andersins in die belang van geregtigheid sal wees;

(b) fasiliteite daarvoor geredelik by die hof beskikbaar of verkrygbaar is; en

(c) die oudiovisuele fasiliteite wat deur die getuie of by die hof gebruik word—

(i) persone by die hofsaal in staat stel om die getuie wat getuienis aflê, te sien, te hoor en met hom of haar te kommunikeer; en

(ii) die getuie wat die getuienis aflê, in staat stel om die persone by die hofsaal te sien, te hoor en met hulle te kommunikeer.

(3) Die hof kan die aflê van getuienis ingevolge subartikel (1) onderhewig maak aan sodanige voorwaardes wat die hof nodig mag ag in die belang van geregtigheid.

(4) Die hof moet redes verstrek vir—

(a) die toestaan of weiering van 'n aansoek wat deur enige van die partye gemaak is; of

(b) sy bevel en enige beswaar wat deur die partye teen die bevel gemaak is,

soos in subartikel (1) beoog.

(5) By die toepassing van hierdie Wet, word 'n getuie wat by wyse van 'n oudiovisuele skakel getuienis aflê, geag 'n getuie te wees wat gedagvaar is om voor die betrokke hof getuienis af te lê.

(6) By die toepassing van hierdie artikel, beteken 'oudiovisuele skakel' fasiliteite wat beide oudio- en visuele kommunikasies tussen 'n getuie en persone by 'n hofsaal, intyds terwyl dit plaasvind, moontlik maak.''.

Wysiging van artikel 59 van Wet 51 van 1977, soos vervang deur artikel 3 van Wet 26 van 1987, artikel 1 van Wet 126 van 1992 en artikel 2 van Wet 75 van 1995

2. Artikel 59 van die Strafproseswet, 1977, word hierby gewysig deur in subartikel (1) paragraaf *(a)* deur die volgende paragraaf te vervang:

''*(a)* 'n Beskuldigde wat in bewaring is ten opsigte van 'n misdryf, behalwe 'n misdryf—

(i) bedoel in Deel II of Deel III van Bylae 2 **[bedoelde misdryf]**;

(ii) teen 'n persoon in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998 (Wet No. 116 van 1998); of

(iii) bedoel in—

(aa) artikel 17(1)*(a)* van die Wet op Gesinsgeweld, 1998;

(bb) artikel 18(1)*(a)* van die Wet op Beskerming teen Teistering, 2011 (Wet No. 17 van 2011); of

(cc) enige wetsbepaling wat 'n oortreding van enige verbod, voorwaarde, verpligting of bevel wat deur 'n hof uitgereik is om die persoon teen wie die betrokke misdryf na bewering gepleeg is, teen die beskuldigde te beskerm, strafbaar maak,

may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official.''.

Amendment of section 59A of Act 51 of 1977, as inserted by section 3 of Act 85 of 1997

3. Section 59A of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution for the heading of the following heading:

''**[Attorney-general] Director of Public Prosecutions may authorise release on bail**''; and

(b) by the substitution for subsections (1), (2), (3) and (4) of the following subsections respectively:

''(1) **[An attorney-general]** A Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by the **[attorney-general]** Director of Public Prosecutions concerned, may, in respect of the offences referred to in Schedule 7 and in consultation with the police official charged with the investigation, authorise the release of an accused on bail: Provided that a person accused of any offence contemplated in section 59(1)*(a)*(ii) or (iii) may not be released on bail in accordance with the provisions of this section.

(2) For the purposes of exercising the functions contemplated in subsections (1) and (3) **[an attorney-general]** the National Director of Public Prosecutions may, after consultation with the Minister, issue directives.

(3) The effect of bail granted in terms of this section is that the person who is in custody shall be released from custody—

(a) upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his or her bail at his or her place of detention contemplated in section 50(1)*(a)*;

(b) subject to reasonable conditions imposed by the **[attorney-general]** Director of Public Prosecutions or prosecutor concerned; or

(c) the payment of such sum of money or the furnishing of such guarantee to pay and the imposition of such conditions.

(4) An accused released in terms of subsection (3) shall appear on the first court day at the court and at the time determined by the **[attorney-general]** Director of Public Prosecutions or prosecutor concerned and the release shall endure until he or she so appears before the court on the first court day.''.

Amendment of section 60 of Act 51 of 1977, as amended by section 2 of Act 56 of 1979, section 2 of Act 64 of 1982, section 3 of Act 75 of 1995, section 4 of Act 85 of 1997, section 5 of Act 34 of 1998, section 9 of Act 62 of 2000, section 4 of Act 55 of 2003 and section 9 of Act 66 of 2008

4. Section 60 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution in subsection (2) for paragraph *(d)* of the following paragraph:

''*(d)* shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (11)*(a)* **[and]**, *(b)* and *(c)*, require of the prosecutor to place on record the reasons for not opposing the bail application.'';

(b) by the substitution for subsection (2A) of the following subsection:

''(2A) The court must, before reaching a decision on the bail application, take into consideration—

(a) any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available; and

(b) the view of any person against whom the offence in question was allegedly committed, regarding his or her safety.'';

kan, voor sy of haar eerste verskyning in 'n laer hof, deur 'n polisiebeampte met of bo die rang van onderoffisier, in oorleg met die polisiebeampte belas met die ondersoek, ten opsigte van so 'n misdryf op borgtog vrygelaat word indien die beskuldigde by die polisiekantoor die bedrag geld deponeer wat deur bedoelde polisiebeampte bepaal word.''.

Wysiging van artikel 59A van Wet 51 van 1977, soos ingevoeg deur artikel 3 van Wet 85 van 1997

3. Artikel 59A van die Strafproseswet, 1977, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

''**[Prokureur-generaal] Direkteur van Openbare Vervolgings kan vrylating op borgtog magtig**''; en

(b) deur subartikels (1), (2), (3) en (4) onderskeidelik deur die volgende subartikels te vervang:

''(1) 'n **[Prokureur-generaal]** Direkteur van Openbare Vervolgings met regsbevoegdheid, of 'n aanklaer deur die betrokke [**prokureur-generaal]** Direkteur van Openbare Vervolgings skriftelik daartoe gemagtig, kan, ten opsigte van die misdrywe bedoel in Bylae 7 en in oorleg met die polisiebeampte belas met die ondersoek, die vrylating van 'n beskuldigde op borgtog magtig: Met dien verstande dat 'n persoon wat van enige misdryf beoog in artikel 59(1)*(a)*(ii) of (iii) beskuldig word, nie ooreenkomstig die bepalings van hierdie artikel op borgtog vrygelaat kan word nie.

(2) Vir doeleindes van die toepassing van die werksaamhede beoog in subartikels (1) en (3) kan **['n prokureur-generaal]** die Nasionale Direkteur van Openbare Vervolgings, na oorleg met die Minister, voorskrifte uitreik.

(3) Die uitwerking van borgtog wat ooreenkomstig hierdie artikel verleen is, is dat die persoon wat in bewaring is, uit bewaring vrygelaat word—

(a) by betaling van die bedrag geld wat vir sy of haar borgtog bepaal is, of by die verstrekking van 'n waarborg om dit te betaal, by die plek beoog in artikel 50(1)*(a)* waar hy of sy aangehou word;

(b) onderhewig aan redelike voorwaardes wat deur die betrokke **[prokureur-generaal]** Direkteur van Openbare Vervolgings of aanklaer opgelê word; of

(c) by betaling van sodanige bedrag geld of die verstrekking van sodanige waarborg om dit te betaal en die oplegging van sodanige voorwaardes.

(4) 'n Beskuldigde wat ingevolge subartikel (3) vrygelaat is, moet op die eerste hofdag by die hof en op die tyd deur die betrokke **[prokureur-generaal]** Direkteur van Openbare Vervolgings of aanklaer bepaal, verskyn, en die vrylating duur voort totdat hy of sy aldus voor die hof op die eerste hofdag verskyn.''.

Wysiging van artikel 60 van Wet 51 van 1977, soos gewysig deur artikel 2 van Wet 56 van 1979, artikel 2 van Wet 64 van 1982, artikel 3 van Wet 75 van 1995, artikel 4 van Wet 85 van 1997, artikel 5 van Wet 34 van 1998, artikel 9 van Wet 62 van 2000, artikel 4 van Wet 55 van 2003 en artikel 9 van Wet 66 van 2008

4. Artikel 60 van die Strafproseswet, 1977, word hierby gewysig—

(a) deur in subartikel (2) paragraaf *(d)* deur die volgende paragraaf te vervang:

''*(d)* moet die hof, waar die aanklaer nie borgtog ten opsigte van aangeleenthede in subartikel (11)*(a)*, **[en]** *(b)* en *(c)* bedoel, teenstaan nie, van die aanklaer vereis om die redes waarom borgtog nie geopponeer word nie op rekord te plaas.'';

(b) deur subartikel (2A) deur die volgende subartikel te vervang:

''(2A) Die hof moet, alvorens **[hy]** die hof 'n borgaansoek beslis**[,]**—

(a) enige voorverhoordienste verslag in ag neem oor die wenslikheid om 'n beskuldigde op borgtog vry te stel, indien so 'n verslag beskikbaar is; en

(b) die siening van enige persoon teen wie die betrokke misdryf na bewering gepleeg is, aangaande sy of haar veiligheid, in ag neem.'';

(c) by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

"*(a)* Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;";

(d) by the substitution for subsection (5) of the following subsection:

"(5) In considering whether the grounds in subsection (4)*(a)* have been established, the court may, where applicable, take into account the following factors, namely—

(a) the degree of violence towards others implicit in the charge against the accused;

(b) any threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person;

(c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person;

(d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;

(e) any disposition of the accused to commit—

(i) offences referred to in Schedule 1;

(ii) an offence against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or

(iii) an offence referred to in—

(aa) section 17(1)*(a)* of the Domestic Violence Act, 1998;

(bb) section 18(1)*(a)* of the Protection from Harassment Act, 2011; or

(cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

as is evident from his or her past conduct;

(f) the prevalence of a particular type of offence;

(g) any evidence that the accused previously committed an offence—

(i) referred to in Schedule 1;

(ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or

(iii) referred to in—

(aa) section 17(1)*(a)* of the Domestic Violence Act, 1998;

(bb) section 18(1)*(a)* of the Protection from Harassment Act, 2011; or

(cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

while released on bail or placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; or

(h) any other factor which in the opinion of the court should be taken into account.";

(e) by the substitution for subsection (10) of the following subsection:

"(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.";

(c) deur in subartikel (4) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* Waar daar die waarskynlikheid is dat die beskuldigde, indien hy of sy op borgtog vrygelaat word, die veiligheid van die publiek, enige persoon teen wie die betrokke misdryf na bewering gepleeg is, of enige ander bepaalde persoon in gevaar sal stel of dat hy of sy 'n Bylae 1-misdryf sal pleeg; of";

(d) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) By oorweging of die grond in subartikel (4)*(a)* vasgestel is, kan die hof, waar toepaslik, die volgende faktore in ag neem, naamlik—

(a) die mate van geweld teenoor ander wat implisiet is by die aanklag teen die beskuldigde;

(b) enige dreigement van geweld wat die beskuldigde teenoor 'n persoon teen wie die betrokke misdryf na bewering gepleeg is of enige ander persoon mag geuiter het;

(c) enige wrok wat die beskuldigde na bewering teenoor 'n persoon teen wie die betrokke misdryf na bewering gepleeg is of enige ander persoon koester;

(d) enige geneigdheid tot geweld deur die beskuldigde, soos blyk uit sy of haar vorige gedrag;

(e) enige geneigdheid van die beskuldigde tot die pleeg van—

(i) misdrywe in Bylae 1 bedoel;

(ii) 'n misdryf teen enige persoon in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998; of

(iii) 'n misdryf bedoel in—

(aa) artikel 17(1)*(a)* van die Wet op Gesinsgeweld, 1998;

(bb) artikel 18(1)*(a)* van die Wet op Beskerming teen Teistering, 2011; of

(cc) enige wetsbepaling wat 'n oortreding van enige verbod, voorwaarde, verpligting of bevel wat deur 'n hof uitgereik is om die persoon teen wie die betrokke misdryf na bewering gepleeg is, teen die beskuldigde te beskerm, strafbaar maak,

soos blyk uit sy of haar vorige gedrag;

(f) die algemeenheid van 'n besondere tipe misdryf;

(g) enige getuienis dat die beskuldigde voorheen terwyl hy of sy op borgtog was of onder korrektiewe toesig, op dagparool, parool of op mediese parool geplaas was soos bedoel in artikel 73 van die Wet op Korrektiewe Dienste, 1998, 'n misdryf—

(i) in Bylae 1 bedoel;

(ii) teen enige persoon in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998; of

(iii) bedoel in—

(aa) artikel 17(1)*(a)* van die Wet op Gesinsgeweld, 1998;

(bb) artikel 18(1)*(a)* van die Wet op Beskerming teen Teistering, 2011; of

(cc) enige wetsbepaling wat 'n oortreding van enige verbod, voorwaarde, verpligting of bevel wat deur 'n hof uitgereik is om die persoon teen wie die betrokke misdryf na bewering gepleeg is, teen die beskuldigde te beskerm, strafbaar maak,

gepleeg het; of

(h) enige ander faktor wat na die oordeel van die hof in ag geneem behoort te word.";

(e) deur subartikel (10) deur die volgende subartikel te vervang:

"(10) Ondanks die feit dat die vervolging nie die verlening van borgtog teenstaan nie, het die hof die verpligting, beoog in subartikel (9), om die persoonlike belange van die beskuldigde teen die belang van geregtigheid op te weeg: Met dien verstande dat die belang van geregtigheid uitgelê word dat dit die veiligheid van enige persoon teen wie die betrokke misdryf na bewering gepleeg is, insluit, maar nie daartoe beperk is nie.";

(f) by the substitution for subsection (11) of the following subsection:

"(11) Notwithstanding any provision of this Act, where an accused is charged with an offence **[referred to]**—

(a) referred to in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;

(b) referred to in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release; or

(c) contemplated in section 59(1)*(a)*(ii) or (iii), the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.";

(g) by the substitution for subsection (11A) of the following subsection:

"(11A) *(a)* If the **[attorney-general]** Director of Public Prosecutions having jurisdiction intends charging any person with an offence referred to in Schedule 5 or 6, the **[attorney-general]** Director of Public Prosecutions may, irrespective of what charge is noted on the charge sheet, at any time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.

(b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.

(c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by **[an attorney-general]** a Director of Public Prosecutions under paragraph *(a)* shall, upon its mere production at such application or proceedings, be *prima facie* proof of the charge to be brought against that person.";

(h) by the substitution in subsection (11B) for paragraph *(a)* of the following paragraph:

"*(a)* In bail proceedings, the accused, or his or her legal adviser, is compelled to inform the court whether—

(i) the accused has previously been convicted of any offence; **[and]**

(ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges;

(iii) an order contemplated in section 5 or 6 of the Domestic Violence Act, 1998, section 3 or 9 of the Protection from Harassment Act, 2011, or any similar order in terms of any other law, was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, and whether such an order is still of force; and

(iv) the accused is, or was at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998."; and

(i) by the substitution for subsection (12) of the following subsection:

"(12) *(a)* The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.

(f) deur subartikel (11) deur die volgende subartikel te vervang:

"(11) Ondanks enige bepaling van hierdie Wet, waar 'n beskuldigde aangekla word van 'n misdryf **[bedoel in]**—

(a) bedoel in Bylae 6, moet die hof gelas dat die beskuldigde in bewaring aangehou word totdat daar met hom of haar ooreenkomstig die reg gehandel is, tensy die beskuldigde, nadat hy of sy 'n redelike geleentheid daartoe gebied is om dit te doen, getuienis aanbied wat die hof oortuig dat daar buitengewone omstandighede bestaan wat sy of haar vrylating in die belang van geregtigheid veroorloof;

(b) bedoel in Bylae 5, maar nie in Bylae 6 nie, moet die hof gelas dat die beskuldigde in bewaring aangehou word totdat daar met hom of haar ooreenkomstig die reg gehandel is, tensy die beskuldigde, nadat hy of sy 'n redelike geleentheid daartoe gebied is om dit te doen, getuienis aanbied wat die hof oortuig dat belang van geregtigheid sy of haar vrylating veroorloof; of

(c) beoog in artikel 59(1)*(a)*(ii) of (iii), moet die hof gelas dat die beskuldigde in bewaring aangehou word totdat daar met hom of haar ooreenkomstig die reg gehandel is, tensy die beskuldigde, nadat hy of sy 'n redelike geleentheid daartoe gebied is om dit te doen, getuienis aanbied wat die hof oortuig dat die belang van geregtigheid sy of haar vrylating veroorloof.";

(g) deur subartikel (11A) deur die volgende subartikel te vervang:

"(11A) *(a)* Indien die **[prokureur-generaal]** Direkteur van Openbare Vervolgings met regsbevoegdheid beoog om 'n persoon aan te kla van 'n misdryf bedoel in Bylae 5 of 6, kan die **[prokureur-generaal]** Direkteur van Openbare Vervolgings, ongeag wat die aanklag is wat op die klagstaat aangeteken is, te eniger tyd voordat die persoon op die aanklag pleit 'n skriftelike bevestiging uitreik te dien effekte dat hy of sy beoog om die beskuldigde van 'n misdryf bedoel in Bylae 5 of 6 aan te kla.

(b) Die skriftelike bevestiging moet so gou doenlik na die uitreiking daarvan deur die aanklaer by die betrokke hof ingehandig word en vorm deel van die hofrekord.

(c) Wanneer die vraag gedurende 'n borgaansoek of borgtogverrigtinge ontstaan of 'n persoon aangekla is of aangekla staan te word van 'n misdryf bedoel in Bylae 5 of 6 is 'n skriftelike bevestiging wat kragtens paragraaf *(a)* deur 'n **[prokureur-generaal]** Direkteur van Openbare Vervolgings uitgereik is by die blote voorlegging daarvan by sodanige aansoek of verrigtinge *prima facie*-bewys van die aanklag wat teen daardie persoon gebring word.";

(h) deur in subartikel (11B) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* In borgtogverrigtinge is die beskuldigde, of sy of haar regsverteenwoordiger, verplig om die hof in te lig of—

(i) die beskuldigde vantevore aan enige misdryf skuldig bevind is; **[en]**

(ii) daar enige aanklagtes teen hom of haar hangende is en of hy of sy op borgtog vrygelaat is ten opsigte van daardie aanklagte;

(iii) 'n bevel beoog in artikel 5 of 6 van die Wet op Gesinsgeweld, 1998, artikel 3 of 9 van die Wet op Beskerming teen Teistering, 2011, of enige soortgelyke bevel ingevolge enige ander wetsbepaling, deur 'n hof uitgereik is om die persoon teen wie die betrokke misdryf na bewering gepleeg is, teen die beskuldigde te beskerm, en of sodanige bevel steeds van krag is; en

(iv) die beskuldigde ten tyde van die beweerde pleging van die misdryf 'n gevonniste oortreder is of was, wat onder korrektiewe toesig, dagparool, parool of mediese parool soos beoog in artikel 73 van die Wet op Korrektiewe Dienste, 1998, geplaas is."; en

(i) deur subartikel (12) deur die volgende subartikel te vervang:

"(12) *(a)* Die hof kan die vrylating van 'n beskuldigde op borgtog onderworpe stel aan voorwaardes wat na die oordeel van die hof in die belang van geregtigheid is: Met dien verstande dat die belang van geregtigheid uitgelê word dat dit insluit, maar nie beperk is nie tot, die veiligheid van die persoon teen wie die betrokke misdryf na bewering gepleeg is.

(b) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), in respect of an offence that was allegedly committed by the accused against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused, and a protection order as contemplated in that Act has not been issued against the accused, the court must, after holding an enquiry, issue a protection order referred to in section 6 of that Act against the accused, where after the provisions of that Act shall apply.''.

Substitution of section 68 of Act 51 of 1977, as substituted by section 10 of Act 75 of 1995 and section 6 of Act 85 of 1997

5. The following section is hereby substituted for section 68 of the Criminal Procedure Act, 1977:

''**Cancellation of bail**

68. (1) Any court before which a charge is pending in respect of which bail has been granted may, whether the accused has been released or not, upon information on oath that—

(a) the accused is about to evade justice or is about to abscond in order to evade justice;

(b) the accused has interfered or threatened or attempted to interfere with witnesses;

(c) the accused has defeated or attempted to defeat the ends of justice;

*(c*A*)* the accused has contravened any prohibition, condition, obligation or order imposed in terms of—

(i) section 7 of the Domestic Violence Act, 1998;

(ii) section 10(1) and (2) of the Protection from Harassment Act, 2011; or

(iii) an order in terms of any other law,

that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused;

(d) the accused poses a threat to the safety of the public, a person against whom the offence in question was allegedly committed, or **[of a]** any other particular person;

(e) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;

*(e*A*)* the accused has not disclosed that—

(i) a protection order as contemplated in section 5 or 6 of the Domestic Violence Act, 1998;

(ii) a protection order as contemplated in section 3 or 9 of the Protection from Harassment Act, 2011; or

(iii) an order in terms of any other law,

was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused and whether such an order is still of force;

*(e*B*)* the accused has not disclosed or correctly disclosed that he or she is or was, at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998;

(f) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or

(g) it is in the interests of justice to do so,

issue a warrant for the arrest of the accused and make such order as it may deem proper, including an order that the bail be cancelled and that the

(b) Indien die hof oortuig is dat die belang van geregtigheid die vrylating van 'n beskuldigde op borgtog veroorloof soos in subartikel (1) voorsiening gemaak word, ten opsigte van 'n misdryf wat na bewering deur die beskuldigde gepleeg is teen enige persoon in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998, met die beskuldigde, en 'n beskermingsbevel soos beoog in daardie Wet is nie teen die beskuldigde uitgereik nie, moet die hof, na die hou van 'n ondersoek, 'n beskermingsbevel bedoel in artikel 6 van daardie Wet teen die beskuldigde uitreik, waarna die bepalings van daardie Wet van toepassing is.''.

Vervanging van artikel 68 van Wet 51 van 1977, soos vervang deur artikel 10 van Wet 75 van 1995 en artikel 6 van Wet 85 van 1997

5. Artikel 68 van die Strafproseswet, 1977, word hierby deur die volgende artikel vervang:

''**Intrekking van borgtog**

68. (1) 'n Hof voor wie 'n aanklag hangende is ten opsigte waarvan borgtog toegestaan is, kan, hetsy die beskuldigde op borgtog vrygelaat is al dan nie, op inligting onder eed dat—

(a) die beskuldigde op die punt staan om aan die gereg te ontkom of op die punt staan om te vlug ten einde aan die gereg te ontkom;

(b) die beskuldigde ingemeng of gedreig of gepoog het om in te meng met getuies;

(c) die beskuldigde die reg verydel het of gepoog het om dit te verydel;

*(c*A*)* die beskuldigde enige verbod, voorwaarde, verpligting of bevel opgelê ingevolge—

(i) artikel 7 van die Wet op Gesinsgeweld, 1998;

(ii) artikel 10(1) en (2) van die Wet op Beskerming teen Teistering, 2011; of

(iii) 'n bevel ingevolge enige ander wetsbepaling,

wat deur 'n hof uitgereik is om die persoon teen wie die misdryf na bewering gepleeg is, teen die beskuldigde te beskerm, oortree het;

(d) die beskuldigde 'n bedreiging inhou vir die veiligheid van die publiek, 'n persoon teen wie die betrokke misdryf na bewering gepleeg is of **[van 'n]** enige ander bepaalde persoon;

(e) die beskuldigde nie al sy of haar vorige veroordelings by die borgtogverrigtinge geopenbaar het nie of nie korrek geopenbaar het nie of waar sy of haar ware lys van vorige veroordelings na sy of haar vrylating op borg aan die lig gekom het;

*(e*A*)* die beskuldigde nie geopenbaar het nie dat—

(i) 'n beskermingsbevel soos beoog in artikel 5 of 6 van die Wet op Gesinsgeweld, 1998;

(ii) 'n beskermingsbevel soos beoog in artikel 3 of 9 van die Wet op Beskerming teen Teistering, 2011; of

(iii) 'n bevel ingevolge enige ander wetsbepaling,

deur 'n hof uitgereik is om die persoon teen wie die misdryf na bewering gepleeg is, teen die beskuldigde te beskerm en hetsy sodanige bevel steeds van krag is;

*(e*B*)* die beskuldigde nie geopenbaar het nie of nie korrek geopenbaar het nie dat hy of sy, ten tyde van die beweerde pleging van die misdryf, 'n gevonniste oortreder is of was wat onder korrektiewe toesig, dagparool, parool of mediese parool soos beoog in artikel 73 van die Wet op Korrektiewe Dienste, 1998, geplaas is;

(f) verdere getuienis sedertdien beskikbaar geraak het of dat faktore aan die lig gekom het, met inbegrip van die feit dat die beskuldigde vals inligting verskaf het by die borgtogverrigtinge, wat die beslissing om borgtog toe te staan, sou kon affekteer het; of

(g) dit in die belang van geregtigheid is om dit te doen,

'n lasbrief vir die inhegtenisneming van die beskuldigde uitreik en die bevel gee wat hy goedvind, met inbegrip van 'n bevel dat die borgtog ingetrek

accused be committed to prison until the conclusion of the relevant criminal proceedings.

(2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that—

(a) he or she has reason to believe that—

(i) an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice;

(ii) the accused has interfered or threatened or attempted to interfere with witnesses;

(iii) the accused has defeated or attempted to defeat the ends of justice; or

(iv) the accused poses a threat to the safety of the public, any person against whom the offence in question was allegedly committed, or **[of a]** any other particular person;

(b) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;

(c) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to release the accused on bail; **[or]**

(d) the accused has contravened any prohibition, condition, obligation or order imposed in terms of—

(i) section 7 of the Domestic Violence Act, 1998;

(ii) section 10(1) and (2) of the Protection from Harassment Act, 2011; or

(iii) an order in terms of any other law,

that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused;

(e) the accused has not disclosed or correctly disclosed that he or she is or was at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998;

(f) the accused has not disclosed that—

(i) a protection order as contemplated in section 5 or 6 of the Domestic Violence Act, 1998;

(ii) a protection order as contemplated in section 3 or 9 of the Protection from Harassment Act, 2011; or

(iii) an order in terms of any other law,

was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused and whether such an order is still of force; or

[*(d)*]*(g)* it is in the interests of justice to do so,

issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison, which committal shall remain of force until the conclusion of the relevant criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.''.

word en dat die beskuldigde tot die beëindiging van die betrokke strafregtelike verrigtinge in 'n gevangenis gevange geset word.

(2) 'n Landdros kan, in omstandighede waarin dit nie doenlik is om 'n lasbrief tot inhegtenisneming kragtens subartikel (1) te verkry nie, op aansoek van 'n vredesbeampte en op 'n skriftelike verklaring onder eed deur so 'n beampte dat—

(a) hy of sy rede het om te vermoed dat—

(i) 'n beskuldigde wat op borgtog vrygelaat is op die punt staan om aan die gereg te ontkom of op die punt staan om te vlug ten einde aan die gereg te ontkom;

(ii) die beskuldigde ingemeng of gedreig of gepoog het om in te meng met getuies;

(iii) die beskuldigde die reg verydel het of gepoog het om dit te verydel; of

(iv) die beskuldigde 'n bedreiging inhou vir die veiligheid van die publiek, enige persoon teen wie die betrokke misdryf na bewering gepleeg is, of **[van 'n]** enige ander bepaalde persoon;

(b) die beskuldigde nie al sy of haar vorige veroordelings by die borgtogverrigtinge geopenbaar het nie of nie korrek geopenbaar het nie of waar sy of haar ware lys van vorige veroordelings na sy of haar vrylating op borg aan die lig gekom het;

(c) verdere getuienis sedertdien beskikbaar geraak het of dat faktore aan die lig gekom het, met inbegrip van die feit dat die beskuldigde vals inligting verskaf het by die borgtogverrigtinge, wat die beslissing om die beskuldigde op borgtog vry te laat, sou kon affekteer het; **[of]**

(d) die beskuldigde enige verbod, voorwaarde, verpligting of bevel opgelê ingevolge—

(i) artikel 7 van die Wet op Gesinsgeweld, 1998;

(ii) artikel 10(1) en (2) van die Wet op Beskerming teen Teistering, 2011; of

(iii) 'n bevel ingevolge enige ander wetsbepaling,

oortree het wat deur 'n hof uitgereik is om die persoon teen wie die betrokke misdryf na bewering gepleeg is, teen die beskuldigde te beskerm;

(e) die beskuldigde nie geopenbaar het nie of nie korrek geopenbaar het nie dat hy of sy ten tyde van die beweerde pleging van die misdryf, 'n gevonniste misdadiger is of was wat onder korrektiewe toesig, dagparool, parool of mediese parool soos beoog in artikel 73 van die Wet op Korrektiewe Dienste, 1998, geplaas is;

(f) die beskuldigde nie geopenbaar het nie dat—

(i) 'n beskermingsbevel soos beoog in artikel 5 of 6 van die Wet op Gesinsgeweld, 1998;

(ii) 'n beskermingsbevel soos beoog in artikel 3 of 9 van die Wet op Beskerming teen Teistering, 2011;

(iii) 'n bevel ingevolge enige ander wetsbepaling,

deur 'n hof uitgereik is om die persoon teen wie die betrokke misdryf na bewering gepleeg is, teen die beskuldigde te beskerm en of sodanige bevel steeds van krag is; of

[*(d)*]*(g)* dit in die belang van geregtigheid is om dit te doen,

'n lasbrief vir die inhegtenisneming van die beskuldigde uitreik, en kan, indien oortuig dat die regsbedeling verydel kan word indien die beskuldigde nie in bewaring geplaas word nie, die borgtog intrek en die beskuldigde in 'n gevangenis gevange set, welke gevangesetting tot die beëindiging van die betrokke strafregtelike verrigtinge van krag bly tensy die hof voor wie die verrigtinge hangende is die borgtog eerder herstel.''.

Amendment of section 158 of Act 51 of 1977, as substituted by section 7 of Act 86 of 1996 and amended by section 68 of Act 32 of 2007

6. Section 158 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

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

(b) by the addition after subsection (5) of the following subsection:

"(6) For purposes of this section, a witness who is outside the Republic and who gives evidence by means of closed circuit television or similar electronic media, is regarded as a witness who was subpoenaed to give evidence in the court in question.".

Amendment of section 161 of Act 51 of 1977, as substituted by section 1 of Act 135 of 1991

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

"(2) In this section the expression *'viva voce'* shall**[,]**—

(a) in the case of a **[deaf and dumb]** witness lacking the sense of hearing or the ability to speak, be deemed to include gesture-language **[and,]**; and

(b) in the case of a witness under the age of eighteen years or a witness who suffers from a physical, psychological, mental or emotional condition, which inhibits the ability of that witness to give his or her evidence *viva voce*,

be deemed to include demonstrations, gestures or any other form of non-verbal expression.".

Amendment of section 170A of Act 51 of 1977, as inserted by section 3 of Act 135 of 1991, substituted by section 1 of Act 17 of 2001 and amended by section 68 of Act 32 of 2007

8. Section 170A of the Criminal Procedure Act, 1977, is hereby amended—

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

"(1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness—

(a) under the biological or mental age of eighteen years;

(b) who suffers from a physical, psychological, mental or emotional condition; or

(c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006),

to undue psychological, mental or emotional stress, trauma or suffering if he or she 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 or her evidence through that intermediary.";

(b) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(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]** may take place in any manner other than through that intermediary.";

(c) by the substitution for subsection (7) of the following subsection:

"(7) *(a)* The court **[shall]** must provide reasons for refusing any application or request by the public prosecutor or a witness referred to in subsection (1), for the appointment of an intermediary, **[in respect of a child below the age of 14 years,]** immediately upon refusal, **[and such]** which reasons **[shall]** must be entered into the record of the proceedings.

Wysiging van artikel 158 van Wet 51 van 1977, soos vervang deur artikel 7 van Wet 86 van 1996 en gewysig deur artikel 68 van Wet 32 van 2007

6. Artikel 158 van die Strafproseswet, 1977, word hierby gewysig—

(a) deur in subartikel (2) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* 'n Hof kan, behoudens artikel 153, uit eie beweging of op aansoek van die staatsaanklaer, beveel dat 'n getuie, ongeag of die getuie binne of buite die Republiek is, of beskuldigde, indien die getuie of beskuldigde daartoe instem, getuienis deur middel van geslotekring-televisie of 'n soortgelyke elektroniese medium kan aflê."; en

(b) deur die byvoeging van die volgende subartikel na subartikel (5):

"(6) By die toepassing van hierdie artikel, word 'n getuie wat buite die Republiek is en wat getuienis aflê deur middel van geslotekringtelevisie of soortgelyke elektroniese media, beskou as 'n getuie wat gedagvaar is om in die betrokke hof getuienis af te lê.".

Wysiging van artikel 161 van Wet 51 van 1977, soos vervang deur artikel 1 van Wet 135 van 1991

7. Artikel 161 van die Strafproseswet, 1977, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) In hierdie artikel word die uitdrukking *'viva voce'***[,]**—

(a) in die geval van 'n **[doofstom]** getuie met ontbrekende gehoorsin of wat nie die vermoë het om te praat nie, geag gebaretaal in te sluit; en**[,]**

(b) in die geval van 'n getuie onder die ouderdom van agtien jaar of 'n getuie wat aan 'n fisieke, sielkundige, verstandelike of emosionele toestand ly, wat daardie getuie se vermoë om sy of haar getuienis *viva voce* af te lê, belemmer,

geag demonstrasies, gebare of enige ander vorm van nie-verbale uitdrukking in te sluit.".

Wysiging van artikel 170A van Wet 51 van 1977, soos ingevoeg deur artikel 3 van Wet 135 van 1991, vervang deur artikel 1 van Wet 17 van 2001 en gewysig deur artikel 68 van Wet 32 van 2007

8. Artikel 170A van die Strafproseswet, 1977, word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Wanneer strafregtelike verrigtinge voor 'n hof hangende is en dit aan daardie hof blyk dat dit 'n getuie—

(a) onder die biologiese of verstandsouderdom van agtien jaar;

(b) wat aan 'n fisieke, sielkundige, verstandelike of emosionele toestand ly; of

(c) wat 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act', 2006 (Wet No. 13 van 2006), as 'older person' omskryf,

aan onredelike sielkundige, **[geestespanning]** geestes- of emosionele spanning, trauma of -lyding sal blootstel indien hy of sy by daardie verrigtinge getuig, kan die hof, behoudens subartikel (4), 'n bevoegde persoon as tussenganger aanstel ten einde so 'n getuie in staat te stel om sy of haar getuienis deur bemiddeling van daardie tussenganger af te lê.";

(b) deur in subartikel (2) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* Geen ondervraging, kruisondervraging of herondervraging van 'n getuie ten opsigte van wie 'n hof 'n tussenganger **[kragtens subartikel (1)]** aangestel het, behalwe ondervraging deur die hof, mag op 'n ander wyse as deur bemiddeling van daardie tussenganger plaasvind nie.";

(c) deur subartikel (7) deur die volgende subartikel te vervang:

"(7) *(a)* Die hof moet onmiddellik na die weiering van 'n aansoek of versoek deur die staatsaanklaer of 'n getuie in subartikel (1) bedoel, om die aanstelling van 'n tussenganger, **[ten opsigte van kinderklaers onder die ouderdom van 14 jaar,]** redes vir sodanige weiering verskaf, welke redes op die rekord van die verrigtinge geplaas moet word.

(b) A court may, on application by the public prosecutor and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced the refusal contemplated in paragraph *(a)*, review its decision.''; and

(d) by the addition after subsection (10) of the following subsections:

''(11) Subject to subsection (13), any person who is competent to be appointed as an intermediary in terms of subsection (4)*(a)* must, before commencing with his or her functions in terms of this section, take an oath or make an affirmation subscribed by him or her, in the form set out below before the judicial officer presiding over the proceedings:

'I, ... do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall, truly and correctly to the best of my knowledge and ability—

(a) perform my functions as an intermediary; and

(b) convey properly and accurately all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court'.

(12) *(a)* Subject to subsection (13), before a person is appointed to perform the functions of an intermediary—

(i) in a magistrate's court for any district or for any regional division, the magistrate presiding over the proceedings; or

(ii) in a Superior Court, the judicial officer presiding over the proceedings,

must enquire into the competence of the person to be appointed as an intermediary.

(b) The enquiry contemplated in paragraph *(a)* must include, but is not limited to, the person's—

(i) fitness as a person to be an intermediary;

(ii) experience which has a bearing on the role and functions of an intermediary;

(iii) qualifications;

(iv) knowledge which has a bearing on the role and functions of an intermediary;

(v) language and communication proficiency; and

(vi) ability to interact with a witness under the biological or mental age of eighteen years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006.

(13) *(a)* The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (12), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in the court concerned.

(b) Before the head of a court issues the certificate referred to in paragraph *(a)*, he or she must cause the person who has been found competent to be appointed as an intermediary to take the oath or make the affirmation referred to in subsection (11) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

(c) A certificate contemplated in paragraph *(a)* may be accepted as proof—

(i) of the competency of a person to be appointed as an intermediary in the court concerned; and

(ii) of the fact that the person has taken the oath or made the affirmation contemplated in subsection (11),

for purposes of this section, in any subsequent proceedings in terms of this Act, before the court concerned in respect of which a certificate contemplated in paragraph *(a)* was issued by the head of a court and it is not necessary for the magistrate or the judicial officer presiding over the

(b) 'n Hof kan, op aansoek van die staatsaanklaer, en indien die hof oortuig is dat daar 'n wesenlike verandering is ten opsigte van enige feit of omstandighede wat die weiering bedoel in paragraaf *(a)*, beïnvloed het, sy beslissing hersien.''; en

(d) deur die volgende subartikels na subartikel (10) in te voeg:

''(11) Behoudens subartikel (13), moet enige persoon wat bevoeg is om ingevolge subartikel (4)*(a)* as 'n tussenganger aangestel te word, voordat hy of sy die eerste keer met sy of haar werksaamhede ingevolge hierdie artikel begin, 'n eed of plegtige verklaring deur hom of haar onderteken, in die onderstaande vorm aflê voor die regterlike beampte wat oor die verrigtinge voorsit:

'Ek, ... verklaar hierby onder eed/plegtig en opreg dat, wanneer ek ook al gevra word om die werksaamhede van 'n tussenganger te verrig, ek waar en korrek en tot die beste van my vermoë—

(a) enige werksaamhede as 'n tussenganger sal verrig; en

(b) alle vrae wat aan getuies gestel word behoorlik en akkuraat sal oordra en, waar nodig, die algemene strekking van enige vraag aan die getuie sal oordra, tensy andersins deur die hof gelas'.

(12) *(a)* Behoudens subartikel (13), voordat 'n persoon aangestel word om die werksaamhede van 'n tussenganger te verrig—

(i) in 'n landdroshof vir enige distrik of vir enige streeksafdeling, moet die landdros wat oor die verrigtinge voorsit; of

(ii) in 'n hoër hof, moet die regterlike beampte wat oor die verrigtinge voorsit,

ondersoek doen na die bevoegdheid van die persoon om as tussenganger aangestel te word.

(b) Die ondersoek in paragraaf *(a)* beoog, moet insluit, maar is nie beperk nie tot, die persoon se—

(i) geskiktheid as 'n persoon om 'n tussenganger te wees;

(ii) ervaring, wat betrekking het op die rol en werksaamhede van 'n tussenganger;

(iii) kwalifikasies;

(iv) kennis, wat betrekking het op die rol en werksaamhede van 'n tussenganger;

(v) taal- en kommunikasievaardigheid; en

(vi) vermoë om met 'n getuie onder die biologiese of verstandsouderdom van agtien jaar of 'n getuie wat aan 'n fisieke, sielkundige, verstandelike of emosionele toestand ly, of 'n getuie wat 'n ouer persoon is soos in die 'Older Persons Act, 2006', as 'older person' omskryf, te werk.

(13) *(a)* Die hoof van 'n hof kan, na goeddunke en nadat'n ondersoek beoog in subartikel (12) gedoen is, 'n sertifikaat in die vorm deur die Minister by kennisgewing in die *Staatskoerant* voorgeskryf, uitreik aan 'n persoon wat hy of sy bevoeg bevind het om as 'n tussenganger in die betrokke hof te verskyn.

(b) Voordat die hoof van 'n hof 'n sertifikaat bedoel in paragraaf *(a)* uitreik, moet hy of sy die persoon wat bevoeg bevind is om as 'n tussenganger aangestel te word, die eed of plegtige verklaring soos bedoel in subartikel (11) laat aflê en die sertifikaat endosseer met 'n verklaring van die feit dat dit afgeneem of gemaak is voor hom of haar en van die datum waarop dit aldus afgeneem of gemaak is en sy of haar handtekening daarop aanbring.

(c) 'n Sertifikaat beoog in paragraaf *(a)* kan aanvaar word as bewys van die—

(i) bevoegdheid van 'n persoon om in die betrokke hof as tussenganger aangestel te word; en

(ii) feit dat die persoon die eed of plegtige verklaring afgelê het soos in subartikel (11) beoog,

by die toepassing van hierdie artikel, in enige daaropvolgende verrigtinge ingevolge hierdie Wet, voor die betrokke hof ten opsigte waarvan die sertifikaat in paragraaf *(a)* uitgereik is deur die hoof van die hof en is dit nie nodig vir die landdros of regterlike beampte wat oor die

proceedings of the court in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary.

(d) Paragraph *(c)* must not be construed as prohibiting a magistrate or a judicial officer presiding over proceedings from holding an enquiry, at any stage of the proceedings, regarding the competence of a person to act as an intermediary.

(e) For the purposes of this section, 'head of a court' means the most senior judicial officer of that court.''.

Amendment of section 299A of Act 51 of 1977, as inserted by section 6 of Act 55 of 2003 and substituted by section 68 of Act 32 of 2007 and section 48 of Act 7 of 2013

9. Section 299A of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) When a court sentences a person to imprisonment for—

(a) murder or any other offence which involves the **[intentional]** killing of a person;

(b) rape or compelled rape as contemplated in **[sections]** section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

(c) robbery, where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;

(d) sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;

(e) kidnapping;

(f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs *(a)* to *(e)*; **[or]**

(g) offences as provided for in sections 4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013; or

(h) a period exceeding seven years for any offence, which that person committed against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with that person,

it shall inform—

(i) the complainant; or

(ii) in the case of murder or any other offence contemplated in paragraph *(a)*, any immediate relative of the deceased,

if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the prisoner on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.''.

Amendment of section 316B of Act 51 of 1977, as inserted by section 11 of Act 107 of 1990

10. The following section is hereby substituted for section 316B of the Criminal Procedure Act, 1977:

''**Appeal by [attorney-general] National Director against sentence of superior court**

316B (1) Subject to subsection (2), the **[attorney-general]** National Director of Public Prosecutions may, in circumstances, where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, appeal to the **[Appellate Division]** Supreme Court of Appeal against a sentence imposed upon an accused **[in a criminal case]** by a **[superior court]** High Court sitting as a court of appeal in terms of section 310A or as a trial court.

verrigtinge van die betrokke hof voorsit, om die eed of bevestiging af te neem nie of om 'n ondersoek te doen na die bevoegdheid van 'n persoon om as 'n tussenganger aangestel te word nie.

(d) Paragraaf *(c)* moet nie uitgelê word nie dat dit 'n landdros of regterlike beampte wat oor die betrokke verrigtinge voorsit, sou verbied om 'n ondersoek te doen, te eniger tyd tydens die verrigtinge, na die bevoegdheid van 'n persoon om as 'n tussenganger op te tree.

(e) By die toepassing van hierdie artikel, beteken 'hoof van 'n hof' die mees senior regterlike beampte van daardie hof.''.

Wysiging van artikel 299A van Wet 51 van 1977, soos ingevoeg deur artikel 6 van Wet 55 van 2003 en vervang deur artikel 68 van Wet 32 van 2007 en artikel 48 van Wet 7 van 2013

9. Artikel 299A van die Strafproseswet, 1977, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

''(1) Wanneer 'n hof iemand tot gevangenisstraf vonnis vir—

(a) moord of enige ander misdryf wat met die **[opsetlike]** doodmaak van 'n persoon betrekking het;

(b) verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 of 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007;

(c) roof waar die hanteer van 'n vuurwapen of 'n ander gevaarlike wapen of die toedeling van 'n ernstige liggaamlike besering of die roof van 'n motorvoertuig betrokke is;

(d) seksuele aanranding, gedwonge seksuele aanranding of gedwonge self-seksuele aanranding soos onderskeidelik beoog in artikel 5, 6 of 7 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007;

(e) menseroof; **[of]**

(f) 'n sameswering, uitlokking of poging om 'n misdryf bedoel in paragrawe *(a)* tot *(e)* te pleeg;

(g) misdrywe soos in artikels 4, 5 en 7 voor voorsiening gemaak en betrokkenheid by hierdie misdrywe soos in artikel 10 van die 'Prevention and Combating of Trafficking in Persons Act', 2013, voor voorsiening gemaak; of

(h) 'n tydperk van meer as sewe jaar vir enige misdryf, wat daardie persoon teen enige persoon in 'n gesinsverhouding, soos omskryf in die Wet op Gesinsgeweld, 1998, met daardie persoon, gepleeg het,

moet die hof—

(i) die klaer; of

(ii) in die geval van moord of enige ander misdryf beoog in paragraaf *(a)*, enige onmiddelike naasbestaande van die oorledene,

indien hy of sy teenwoordig is, inlig dat hy of sy 'n reg het om, behoudens die voorskrifte wat deur die Kommissaris van Korrektiewe Dienste kragtens subartikel (4) uitgereik is, vertoë te rig wanneer die uitplasing van die gevangene op parool, op dagparool of onder korrektiewe toesig oorweeg word of om 'n tersaaklike vergadering van die paroolraad by te woon.''.

Wysiging van artikel 316B van Wet 51 van 1977, soos ingevoeg deur artikel 11 van Wet 107 van 1990

10. Artikel 316B van die Strafproseswet, 1977, word hierby deur die volgende subartikel vervang:

''**Appèl deur [prokureur-generaal] Nasionale Direkteur teen vonnis van hoër hof**

316B (1) Die **[prokureur-generaal]** Nasionale Direkteur van Openbare Vervolgings kan, in omstandighede waar 'n ernstige regskending andersins sal geskied of die regspleging in oneer gebring kan word, behoudens subartikel (2), teen 'n vonnis wat 'n beskuldigde **[in 'n strafsaak]** in 'n hoër hof opgelê is, wat as 'n hof van appèl ingevolge artikel 310A of as 'n verhoorhof gesit het, na die **[Appèlafdeling]** Hoër Hof van Appèl appelleer.

(2) The provisions of section 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]** National Director of Public Prosecutions appeals in terms of subsection (1) of this section.

(3) Upon an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the **[attorney-general]** National Director of Public Prosecutions, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.''.

Amendment of Schedule 1 to Act 51 of 1977, as amended by section 17 of Act 26 of 1987, section 8 of Act 122 of 1998, section 68 of Act 32 of 2007, section 48 of Act 7 of 2013 and section 11 of Act 13 of 2013

11. Schedule 1 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence ''Assault, when a dangerous wound is inflicted'' of the following offence:

''Assault—

(a) when a dangerous wound is inflicted;

(b) involving the infliction of grievous bodily harm; or

(c) where a person is threatened—

(i) with grievous bodily harm; or

(ii) with a fire-arm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).''.

Amendment of Part II of Schedule 2 to Act 51 of 1977, as substituted by section 68 of Act 32 of 2007 and amended by section 48 of Act 7 of 2013 and section 11 of Act 13 of 2013

12. Part II of Schedule 2 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence ''Assault, when a dangerous wound is inflicted'' of the following offence:

''Assault—

(a) when a dangerous wound is inflicted;

(b) involving the infliction of grievous bodily harm; or

(c) where a person is threatened—

(i) with grievous bodily harm; or

(ii) with a firearm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).''.

Amendment of Schedule 7 to Act 51 of 1977, as inserted by section 10 of Act 85 of 1997, amended by section 10 of Act 34 of 1998 and section 16 of Act 62 of 2000 and substituted by section 68 of Act 32 of 2007

13. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence ''Assault, involving the infliction of grievous bodily harm'' of the following offence:

''Assault—

(a) when a dangerous wound is inflicted;

(b) involving the infliction of grievous bodily harm; or

(c) where a person is threatened—

(i) with grievous bodily harm; or

(ii) with a firearm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).''.

(2) Die bepalings van artikel 316 met betrekking tot 'n aansoek of appèl in daardie artikel bedoel deur 'n beskuldigde, is *mutatis mutandis* van toepassing met betrekking tot 'n saak waarin die **[prokureur-generaal]** Nasionale Direkteur van Openbare Vervolgings ingevolge subartikel (1) van hierdie artikel appelleer.

(3) By 'n appèl ingevolge subartikel (1) of 'n aansoek in subartikel (2) bedoel wat deur die **[prokureur-generaal]** Nasionale Direkteur van Openbare Vervolgings aangebring is, kan die hof gelas dat die Staat aan die betrokke beskuldigde die geheel of 'n gedeelte van die koste betaal wat teen die beskuldigde by bestryding van die appèl of aansoek opgeloop het, getakseer volgens die tarief in siviele sake van daardie hof.''.

Wysiging van Bylae 1 tot Wet 51 van 1977, soos gewysig deur artikel 17 van Wet 26 van 1987, artikel 8 van Wet 122 van 1998, artikel 68 van Wet 32 van 2007, artikel 48 van Wet 7 van 2013 en artikel 11 van Wet 13 van 2013

11. Bylae 1 tot die Strafproseswet, 1977, word hierby gewysig deur die misdryf ''Aanranding, wanneer 'n gevaarlike wond toegedien word'' deur die volgende misdryf te vervang:

''Aanranding**[,]**—

(a) wanneer 'n gevaarlike wond toegedien word;

(b) wat die toediening van ernstige liggaamlike leed behels; of

(c) waar 'n persoon gedreig word—

(i) met ernstige liggaamlike leed; of

(ii) met 'n vuurwapen of gevaarlike wapen, soos omskryf in die 'Dangerous Weapons Act, 2013' (Wet No. 15 van 2013).''.

Wysiging van Deel II by Bylae 2 tot Wet 51 van 1977, soos vervang deur artikel 68 van Wet 32 van 2007 en gewysig deur artikel 48 van Wet 7 van 2013 en artikel 11 van Wet 13 van 2013

12. Deel II van Bylae 2 tot die Strafproseswet, 1977, word hierby gewysig deur die misdryf ''Aanranding, wanneer 'n gevaarlike wond toegedien word'' deur die volgende misdryf te vervang:

''Aanranding**[,]**—

(a) wanneer 'n gevaarlike wond toegedien word;

(b) wat die toediening van ernstige liggaamlike leed behels; of

(c) waar 'n persoon gedreig word—

(i) met ernstige liggamlike leed; of

(ii) met 'n vuurwapen of gevaarlike wapen, soos omskryf in artikel 1 van die 'Dangerous Weapons Act', 2013 (Wet No. 15 van 2013).''.

Wysiging van Bylae 7 tot Wet 51 van 1977, soos ingevoeg deur artikel 10 van Wet 85 van 1997, gewysig deur artikel 10 van Wet 34 van 1998 en artikel 16 van Wet 62 van 2000 en vervang deur artikel 68 van Wet 32 van 2007

13. Bylae 7 tot die Strafproseswet, 1977, word hierby gewysig deur die misdryf ''Aanranding, waarby die toediening van ernstige liggaamlike leed betrokke is'' deur die volgende misdryf te vervang:

''Aanranding—

(a) wanneer 'n gevaarlike wond toegedien word;

(b) wat die toediening van ernstige liggaamlike leed behels; of

(c) waar 'n persoon gedreig word—

(i) met ernstige liggaamlike leed; of

(ii) met 'n vuurwapen of gevaarlike wapen, soos omskryf in artikel 1 van die 'Dangerous Weapons Act', 2013 (Wet No. 15 van 2013).''.

Amendment of Schedule 8 to Act 51 of 1977, as inserted by section 5 of Act 37 of 2013

14. Schedule 8 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence ''Assault, when a dangerous wound is inflicted'' of the following offence:

''Assault—

(a) when a dangerous wound is inflicted;

(b) involving the infliction of grievous bodily harm; or

(c) where a person is threatened—

(i) with grievous bodily harm; or

(ii) with a fire-arm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).''.

Amendment of Part I of Schedule 2 to Act 105 of 1997, as amended by section 37 of Act 62 of 2000 and section 27 of Act 33 of 2004, section 68 of Act 32 of 2007, section 5 of Act 38 of 2007, section 22 of Act 66 of 2008, section 48 of Act 7 of 2013 and section 25 of Act 8 of 2017

15. Part I of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended—

(a) by the substitution for the offence ''Murder'' of the following offence:

''Murder, when—

(a) it was planned or premeditated;

(b) the victim was—

(i) a law enforcement officer performing his or her functions as such, whether on duty or not; **[or]**

(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at criminal proceedings in any court; or

(iii) a person under the age of eighteen years;

(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:

(i) rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or

(ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy;

(e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim; **[or]**

(f) the death of the victim resulted from, or is directly related to, any offence contemplated in section 1*(a)* to *(e)* of the Witchcraft Suppression Act, 1957 (Act No. 3.3 of 1957)**[.]**; or

(g) the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs *(a)* and *(b)* of the definition of ''domestic violence'' in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim.'';

(b) by the insertion of the following offence:

''Attempted murder, in circumstances referred to in paragraphs *(a)* to *(g)* of the offence of 'murder'.''.

Wysiging van Bylae 8 tot Wet 51 van 1977, soos ingevoeg deur artikel 5 van Wet 37 van 2013

14. Bylae 8 tot die Strafproseswet, 1977, word hierby gewysig deur die misdryf ''Aanranding, wanneer 'n gevaarlike wond toegedien word'' deur die volgende misdryf te vervang:

''Aanranding—

(a) wanneer 'n gevaarlike wond toegedien word;

(b) waarby die toediening van ernstige liggaamlike leed betrokke is; of

(c) waar 'n persoon gedreig word—

(i) met ernstige liggaamlike leed; of

(ii) met 'n vuurwapen of gevaarlike wapen, soos omskryf in artikel 1 van die 'Dangerous Weapons Act, 2013' (Wet No. 15 van 2013).''.

Wysiging van Deel I van Bylae 2 tot Wet 105 van 1997, soos gewysig deur artikel 37 van Wet 62 van 2000 en artikel 27 van Wet 33 van 2004, artikel 68 van Wet 32 van 2007, artikel 5 van Wet 38 van 2007, artikel 22 van Wet 66 van 2008, artikel 48 van Wet 7 van 2013 en artikel 25 van Wet 8 van 2017

15. Deel I van Bylae 2 tot die Strafregwysigingswet, 1997, word hierby gewysig—

(a) deur die misdryf ''Moord'' deur die volgende misdryf te vervang:

''Moord, waar—

(a) dit beplan of met voorbedagte rade gepleeg is;

(b) die slagoffer—

(i) 'n wetstoepassingsbeampte was wat sy of haar werksaamhede as sodanig verrig het, hetsy aan diens al dan nie; **[of]**

(ii) 'n persoon was wat getuienis afgelê het of waarskynlik wesenlike getuienis met betrekking tot 'n in Bylae 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977), bedoelde misdryf by strafregtelike verrigtinge in 'n hof sou aflê; of

(iii) 'n persoon onder die ouderdom van agtien jaar;

(c) die dood van die slagoffer deur die beskuldigde veroorsaak is by die pleging van een van die volgende misdrywe of die poging om dit te pleeg of nadat hy of sy dit gepleeg of gepoog het om dit te pleeg:

(i) Verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 of 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007; of

(ii) roof met verswarende omstandighede soos in artikel 1 van die Strafproseswet, 1977 (Wet No. 51 van 1977), omskryf; of

(d) die misdryf deur 'n persoon, groep persone of sindikaat wat in die uitvoering of ter bevordering van 'n gemeenskaplike doel of sameswering handel, gepleeg is;

(e) die slagoffer gedood is ten einde wederregtelik enige liggaamsdeel van die slagoffer te verwyder, of as gevolg van die wederregtelike verwydering van 'n liggaamsdeel van die slagoffer; **[of]**

(f) die dood van die slagoffer voortgespruit het uit, of direk verband hou met, enige misdryf beoog in artikel 1 *(a)* tot *(e)* van die Wet op die Onderdrukking van Toorkuns, 1957 (Wet No. 3 van 1957); of

(g) die dood van die slagoffer die gevolg van fisieke mishandeling of seksuele mishandeling was, soos beoog in paragrawe *(a)* en *(b)* van die omskrywing van 'gesinsgeweld' in artikel 1 van die Wet op Gesinsgeweld, 1998 (Wet No. 116 van 1998), deur die beskuldigde wat in 'n gesinsverhouding, soos in artikel 1 van daardie Wet omskryf, met die slagoffer is.'';

(b) deur die volgende misdryf in te voeg:

''Poging to moord, in omstandighede bedoel in paragrawe *(a)* tot *(g)* van die misdryf van 'moord'.'';

(c) by the substitution for paragraphs *(a)*, *(b)* and *(c)* of the offence ''Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007'' of the following paragraphs:

''*(a)* when committed—

(i) in the circumstances where the accused is convicted of the offence of rape and evidence adduced at the trial of the accused proves that the victim was also raped by—

(aa) any co-perpetrator or accomplice; or

(bb) a person, who was compelled by any co-perpetrator or accomplice, to rape the victim, as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007,

irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

(ii) in the circumstances where the accused is convicted of the offence of rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial of the accused proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

(iii) by the accused who—

(aa) has previously been convicted of the offence of rape or compelled rape; or

(bb) has been convicted by the trial court of two or more offences of rape or the offences of rape and compelled rape,

irrespective of—

(aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;

(bbb) the date of the commission of any such offence of which the accused has so been convicted;

(ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;

(ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or

(eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or

(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus;

(b) where the victim—

(i) is a person under the age of **[16]** 18 years;

(iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006);

(ii) is a **[physically disabled]** person with a disability who, due to his or her **[physical]** disability, is rendered **[particularly]** vulnerable; **[or]**

(iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or

(iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or

(c) deur paragrawe *(a)*, *(b)* en *(c)* van die misdryf ''Verkragting soos beoog in artikel 3 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007'', deur die volgende paragrawe te vervang:

''*(a)* wanneer gepleeg—

(i) in die omstandighede waar die beskuldigde aan die misdryf van verkragting skuldig bevind word en getuienis by die beskuldigde se verhoor bewys dat die slagoffer ook verkrag is—

(aa) deur enige mededader of medepligtige; of

(bb) deur 'n persoon, wat deur enige mededader of medepligtige gedwing is om die slagoffer te verkrag, soos in artikel 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, beoog,

ongeag hetsy die mededader of medepligtige aan die betrokke misdryf skuldig bevind is, of daarvan aangekla is, of daarvoor verhoor word, al dan nie;

(ii) in die omstandighede waar die beskuldigde aan die misdryf van verkragting skuldig bevind word op grond daarvan dat die beskuldigde in die uitvoering of bevordering van 'n gemene doel of sameswering gehandel het en getuienis by die verhoor van die beskuldigde aangebied, bewys dat die slagoffer deur meer as een persoon verkrag is wat in die uitvoering of bevordering van 'n gemene doel of sameswering gehandel het om die slagoffer te verkrag, ongeag hetsy enige ander persoon wat aldus in die uitvoering of bevordering van 'n gemene doel of sameswering gehandel het, skuldig bevind is aan, of aangekla is van, of verhoor word ten opsigte van, die betrokke misdryf, al dan nie;

(iii) deur die beskuldigde wat—

(aa) voorheen aan die misdryf van verkragting of gedwonge verkragting skuldig bevind is;

(bb) deur die verhoorhof aan twee of meer misdrywe van verkragting of die misdrywe van verkragting en gedwonge verkragting skuldig bevind is,

ongeag—

(aaa) hetsy die verkragting waaraan die beskuldigde aldus skuldig bevind is 'n gemeenregtelike of statutêre misdryf daarstel;

(bbb) die datum van die pleging van enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is;

(ccc) hetsy die beskuldigde ten opsigte van enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is, gevonnis is;

(ddd) hetsy enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is, ten opsigte van dieselfde slagoffer of enige ander slagoffer gepleeg is; of

(eee) hetsy enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is, as deel van dieselfde gebeure, tydens 'n enkele voorval of tydens verskillende voorvalle gepleeg is; of

(iv) deur 'n persoon, wetende dat hy die verworwe immuniteitsgebrek-sindroom of die menslike immunogebreksvirus het;

(b) waar die slagoffer—

(i) iemand onder die ouderdom van **[16]** agtien jaar is;

(iA) 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act', 2006 (Wet No. 13 van 2006), as 'older person' omskryf;

(ii) 'n **[liggaamlik gestremde]** persoon met 'n gestremdheid is wat weens sy of haar **[liggaamlike]** gestremdheid **[veral]** trefbaar is; **[of]**

(iii) iemand is wat verstandelik gestremd is soos in artikel 1 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, beoog; of

(iv) in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998, met die beskuldigde is of was; of

(c) involving the infliction of grievous bodily harm.''; and

(d) by the substitution for paragraphs *(a)*, *(b)* and *(c)* of the offence ''Compelled rape as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007'' of the following paragraphs:

''(a) when committed—

(i) in the circumstances where the accused is convicted of the offence of compelled rape and evidence adduced at the trial of the accused proves that the victim was also raped—

(aa) as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, by any co-perpetrator or accomplice; or

(bb) by a person, who was compelled by any co-perpetrator or accomplice, to rape the victim,

irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

(ii) in the circumstances where the accused is convicted of the offence of compelled rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;

(iii) by the accused who—

(aa) has previously been convicted of the offence of compelled rape or rape; or

(bb) has been convicted by the trial court of two or more offences of compelled rape or the offences of compelled rape and rape,

irrespective of—

(aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;

(bbb) the date of the commission of any such offence of which the accused has so been convicted;

(ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;

(ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or

(eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or

(iv) under circumstances where the accused knows that the person who is compelled to rape the victim has the acquired immune deficiency syndrome or the human immunodeficiency virus;

(b) where the victim—

(i) is a person under the age of **[16]** 18 years;

(iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006);

(c) waarby die toediening van ernstige liggaamlike leed betrokke is.''; en

(d) deur paragrawe *(a)*, *(b)* en *(c)* van die misdryf ''Gedwonge verkragting soos beoog in artikel 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, deur die volgende paragrawe te vervang:

''(a) wanneer gepleeg—

(i) in die omstandighede waar die beskuldigde aan die misdryf van gedwonge verkragting skuldig bevind word en getuienis by die beskuldigde se verhoor bewys dat die slagoffer ook verkrag is—

(aa) soos beoog in artikel 3 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, deur enige mededader of medepligtige; of

(bb) deur 'n persoon wat deur enige mededader of medepligtige gedwing is om die slagoffer te verkrag,

ongeag hetsy die mededader of medepligtige aan die betrokke misdryf skuldig bevind is, of daarvan aangekla is, of daarvoor verhoor word, al dan nie;

(ii) in die omstandighede waar die beskuldigde aan die misdryf van gedwonge verkragting skuldig bevind word op grond daarvan dat die beskuldigde in die uitvoering of bevordering van 'n gemene doel of sameswering gehandel het en getuienis aangebied by die verhoor van die beskuldigde bewys dat die slagoffer deur meer as een persoon verkrag is wat in die uitvoering of bevordering van 'n gemene doel of sameswering opgetree het om die slagoffer te verkrag, ongeag hetsy enige ander persoon wat aldus in die uitvoering of bevordering van 'n gemene doel of sameswering gehandel het, skuldig bevind is aan, of aangekla is van, of verhoor word ten opsigte van, die betrokke misdryf;

(iii) deur die beskuldigde wat—

(aa) voorheen aan die misdryf van verkragting of gedwonge verkragting skuldig bevind is;

(bb) deur die verhoorhof aan twee of meer misdrywe van gedwonge verkragting of die misdrywe van gedwonge verkragting en verkragting skuldig bevind is,

ongeag—

(aaa) hetsy die verkragting waaraan die beskuldigde aldus skuldig bevind is, 'n gemeenregtelike of statutêre misdryf daarstel;

(bbb) die datum van die pleging van enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is;

(ccc) hetsy die beskuldigde ten opsigte van enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is, gevonnis is;

(ddd) hetsy enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is, ten opsigte van dieselfde slagoffer of enige ander slagoffer gepleeg is; of

(eee) hetsy enige sodanige misdryf waaraan die beskuldigde aldus skuldig bevind is, as deel van dieselfde gebeure, tydens 'n enkele voorval of tydens verskillende voorvalle gepleeg is; of

(iv) onder omstandighede waar die beskuldigde weet dat die persoon wat gedwing word om die slagoffer te verkrag, die verworwe immuniteitsgebrek-sindroom of die menslike immunogebreksvirus het;

(b) waar die slagoffer—

(i) iemand onder die ouderdom van **[16]** 18 jaar is;

(iA) 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act', 2006 (Wet No. 13 van 2006), as 'older person' omskryf;

(ii) is a **[physically disabled]** person with a disability who, due to his or her **[physical]** disability, is rendered **[particularly]** vulnerable; **[or]**

(iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or

(iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or

(c) involving the infliction of grievous bodily harm.''.

Amendment of Part II of Schedule 2 to Act 105 of 1997, as amended by section 36 of Act 12 of 2004, section 27 of Act 33 of 2004 and section 6 of Act 18 of 2015

16. Part II of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the addition of the following offences:

''Attempted murder in circumstances other than those referred to in Part I.

Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, in circumstances other than those referred to in Part I.

Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23, or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20(1) or 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.''.

Amendment of Part III of Schedule 2 to Act 105 of 1997, as substituted by section 68 of Act 32 of 2007 and amended by section 48 of Act 7 of 2013

17. Part III of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended—

(a) by the deletion of the following offences:

''**[Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I.**

Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23 or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20 (1) or 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.]''; and

(b) by the insertion of the following offence:

''Assault with intent to do grievous bodily harm—

(a) on a child—

(i) under the age of 16 years; or

(ii) either 16 or 17 years of age and the age difference between the child and the person who has been convicted of the offence is more than four years; or

(b) where the victim is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused.''.

(ii) 'n **[liggaamlik gestremde]** persoon met 'n gestremdheid is wat weens sy of haar **[liggaamlike]** gestremdheid **[veral]** trefbaar is; **[of]**

(iii) iemand is wat verstandelik gestremd is soos in artikel 1 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, beoog; of

(iv) in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998, met die beskuldigde is of was; of

(c) waarby die toediening van ernstige liggaamlike leed betrokke is.''.

Wysiging van Deel II van Bylae 2 by Wet 105 van 1997, soos gewysig deur artikel 36 van Wet 12 van 2004, artikel 27 van Wet 33 van 2004 en artikel 6 van Wet 18 van 2015

16. Deel II van Bylae 2 van die Strafregwysigingswet, 1997, word hierby gewysig deur die volgende misdrywe by te voeg:

''Poging tot moord in omstandighede anders as die in Deel I bedoel.

Verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 en 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, in omstandighede anders as die in Deel I bedoel.

Seksuele uitbuiting van 'n kind of seksuele uitbuiting van 'n persoon wat verstandelik gestremd is soos beoog in artikel 17 of 23, of gebruik van 'n kind vir kinderpornografie of gebruik van 'n persoon wat verstandelik gestremd is vir pornografiese doeleindes, soos beoog in artikel 20(1) of 26(1) van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, onderskeidelik.''.

Wysiging van Deel III van Bylae 2 by Wet 105 van 1997, soos vervang deur artikel 68 van Wet 32 van 2007 en gewysig deur artikel 48 van Wet 7 van 2013

17. Deel III van Bylae 2 tot die Strafregwysigingswet, 1997, word hierby gewysig—

(a) deur die volgende misdrywe te skrap:

''**[Verkragting of gedwonge verkragting soos onderskeidelik beoog in artikel 3 of 4 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007, in ander omstandighede as daardie in Deel I bedoel.**

Seksuele uitbuiting van 'n kind of seksuele uitbuiting van iemand wat verstandelik gestremd is soos onderskeidelik beoog in artikel 17 en 23 of die gebruik van 'n kind vir kinderpornografie of die gebruik van iemand wat verstandelik gestremd is vir pornografiese doeleindes soos onderskeidelik beoog in artikel 20 (1) of 26 (1) van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007.]''; en

(b) deur die volgende misdryf in te voeg:

''Aanranding met die opset om ernstige liggaamlike leed toe te dien—

(a) aan 'n kind—

(i) onder die ouderdom van 16 jaar; of

(ii) van 16 of 17 jaar en die ouderdomsverskil tussen die kind en die persoon wat aan die misdryf skuldig bevind is, is meer as vier jaar; of

(b) waar die slagoffer in 'n gesinsverhouding, soos omskryf in artikel 1 van die Wet op Gesinsgeweld, 1998, met die aangeklaagde is of was.''.

Insertion of sections 37A, 37B and 37C in Act 10 of 2013

18. The following sections are hereby inserted in the Superior Courts Act, 2013, after section 37:

"**Evidence through intermediaries in proceedings other than criminal proceedings**

37A. (1) A Superior Court may, on application by any party to proceedings, other than criminal proceedings before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness—

(a) under the biological or mental age of 18 years;

(b) who suffers from a physical, psychological, mental or emotional condition; or

(c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006),

to give his or her evidence through that intermediary, if it appears to that court that the proceedings would expose such a witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings.

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

(b) The 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 in terms of subsection (1), the court may direct that the relevant witness gives his or her evidence at any place—

(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 or her testimony.

(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.

(b) An intermediary appearing at proceedings in terms of this section who is not in the full-time employment of the State must be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as is prescribed by the rules made—

(i) by the Rules Board for Courts of Law under the Rules Board for Courts of Law Act, 1985, in respect of the High Court; or

(ii) in terms of section 29 of this Act, in respect of the Constitutional Court.

(5) *(a)* A court must provide reasons for refusing any application for the appointment of an intermediary, immediately upon refusal, which reasons must be entered into the record of the proceedings.

(b) A court may, on application by a party affected by the refusal contemplated in paragraph *(a)*, and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced that refusal, review its decision.

(6) An intermediary referred to in subsection (1) may be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.

(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court is for any reason absent, becomes unable to act as an intermediary, in the opinion

Invoeging van artikels 37A, 37B en 37C in Wet 10 van 2013

18. Die volgende artikels word hierby na artikel 37 in die Wet op Hoër Howe, 2013, ingevoeg:

"**Getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie**

37A. (1) 'n Hoër hof kan, op aansoek deur enige party tot verrigtinge, wat nie strafregtelike verrigtinge is nie, voor die hof, of uit eie beweging en behoudens subartikel (4), 'n bevoegde persoon as tussenganger aanstel ten einde 'n getuie—

(a) onder die biologiese of verstandelike ouderdom van 18 jaar;

(b) wat aan 'n fisiese, sielkundige, verstandelike of emosionele toestand ly; of

(c) wat 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act', 2006 (Wet No. 13 van 2006), as 'older person' omskryf,

in staat te stel om sy of haar getuienis deur bemiddeling van daardie tussenganger af te lê, indien dit vir daardie hof blyk dat die verrigtinge so 'n getuie aan onnodige sielkundige, verstandelike of emosionele spanning, trauma of lyding sal blootstel indien hy of sy by daardie verrigtinge getuienis aflê.

(2) *(a)* Geen ondervraging, kruisondervraging of herondervraging van enige getuie ten opsigte van wie 'n hof 'n tussenganger aangestel het, behalwe ondervraging deur die hof, mag op enige wyse anders as deur bemiddeling van daardie tussenganger plaasvind nie.

(b) Die tussenganger kan, tensy die hof anders gelas, die algemene strekking van enige vraag aan die tersaaklike getuie oordra.

(3) Indien 'n hof 'n tussenganger ingevolge subartikel (1) aanstel, kan die hof gelas dat die tersaaklike getuie sy of haar getuienis op enige plek lewer—

(a) wat informeel ingerig is om daardie getuie op sy of haar gemak te stel;

(b) wat so geleë is dat enige persoon wie se teenwoordigheid daardie getuie kan ontstel, buite sig en hoorafstand van daardie getuie is; en

(c) wat die hof en enige persoon wie se teenwoordigheid by die tersaaklike verrigtinge nodig is, in staat stel om, hetsy regstreeks of deur middel van enige elektroniese of ander toestelle, daardie tussenganger sowel as die getuie, te sien en te hoor tydens sy of haar getuienis.

(4) *(a)* Die Minister kan, by kennisgewing in die *Staatskoerant*, die persone of die kategorie of klas persone wat bevoeg is om as tussengangers aangestel te word, bepaal.

(b) 'n Tussenganger wat by verrigtinge verskyn ingevolge hierdie artikel en wat nie voltyds in diens van die Staat is nie, moet sodanige reis- en onderhoud- en ander toelaes ten opsigte van die dienste wat hy of sy lewer, betaal word, soos voorgeskryf deur die reëls—

(i) deur die Reëlsraad vir Geregshowe kragtens die Wet op die Reëlsraad vir Geregshowe, 1985, ten opsigte van die Hooggeregshof, gemaak; of

(ii) ingevolge artikel 29 van hierdie Wet, ten opsigte van die Konstitusionele Hof, gemaak.

(5) *(a)* 'n Hof moet redes verskaf vir die weiering van enige aansoek om die aanstelling van 'n tussenganger, onmiddellik by weiering, welke redes op die rekord van verrigtinge geplaas moet word.

(b) 'n Hof kan, op aansoek deur 'n party wat deur die weiering beoog in paragraaf *(a)* geraak word, en indien die hof oortuig is dat daar 'n wesenlike verandering is ten opsigte van enige feit of omstandigheid wat daardie weiering beïnvloed het, sy beslissing hersien.

(6) 'n Tussenganger beoog in subartikel (1), kan gedagvaar word om op 'n gespesifiseerde datum en op 'n gespesifiseerde plek en tyd voor die hof te verskyn om as 'n tussenganger op te tree.

(7) Indien, by die aanvang of op enige stadium voor die afhandeling van die betrokke verrigtinge, 'n tussenganger wat deur die hof aangestel is om enige rede afwesig is, na die oordeel van die hof onbekwaam raak om as

of the court, or dies, the court may, in the interests of justice and after due consideration of the arguments put forward by the parties—

(a) postpone the proceedings in order to obtain the intermediary's presence;

(b) summons the intermediary to appear before the court to advance reasons for being absent;

(c) direct that the appointment of the intermediary be revoked and appoint another intermediary; or

(d) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary.

(8) The court must immediately give reasons for any direction or order referred to in subsection (7)*(c)* or *(d)*, which reasons must be entered into the record of the proceedings.

Oath and competency of intermediaries

37B. (1) Subject to subsection (3), any person who is competent to be appointed as an intermediary in terms of section 37A(4) of this Act must, before commencing with his or her functions in terms of section 37A, take an oath or make an affirmation subscribed by him or her, in the form set out below, before the judicial officer presiding over the proceedings:

'I, ... do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall truly and correctly, to the best of my knowledge and ability—

(a) perform my functions as an intermediary; and

(b) convey properly and accurately all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court'.

(2) *(a)* Subject to subsection (3), before a person is appointed to perform the functions of an intermediary in a Superior Court, the judicial officer presiding over the proceedings must enquire into the competence of the person to be appointed as an intermediary.

(b) The enquiry contemplated in paragraph *(a)* must include, but is not limited to, the person's—

(i) fitness as a person to be an intermediary;

(ii) experience, which has a bearing on the role and functions of an intermediary;

(iii) qualifications;

(iv) knowledge, which has a bearing on the role and functions of an intermediary;

(v) language and communication proficiency; and

(vi) ability to interact with a witness under the biological or mental age of 18 years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006.

(3) *(a)* The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (2), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in a Superior Court.

(b) Before the head of a court issues a certificate referred to in paragraph *(a)*, he or she must cause the person who has been found competent to be appointed as an intermediary, to take the oath or make the affirmation referred to in subsection (1) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

(c) A certificate contemplated in paragraph *(a)* may be accepted as proof—

(i) of the competency of a person to be appointed as an intermediary; and

tussenganger op te tree of sterf, kan die hof, in die belang van geregtigheid en na behoorlike oorweging van die betoë deur die partye gelewer—

(a) die verrigtinge uitstel ten einde die tussenganger se teenwoordigheid te bekom;

(b) die tussenganger dagvaar om voor die hof te verskyn ten einde redes vir sy of haar afwesigheid te verskaf;

(c) gelas dat die aanstelling van die tussenganger ingetrek word en 'n ander tussenganger aanstel; of

(d) gelas dat die aanstelling van die tussenganger ingetrek word en dat die verrigtinge in die afwesigheid van 'n tussenganger voortgaan.

(8) Die hof moet onmiddellik redes verskaf vir enige lasgewing of bevel in subartikel (7)*(c)* of *(d)* bedoel, welke redes op die rekord van verrigtinge geplaas moet word.

Eed en bevoegdheid van tussengangers

37B. (1) Behoudens subartikel (3), moet enige persoon wat bevoeg is om ingevolge artikel 37A(4) van hierdie Wet as tussenganger aangestel te word, voordat hy of sy die werksaamhede ingevolge artikel 37A opneem, 'n eed of plegtige verklaring, deur hom of haar onderteken, in die onderstaande vorm aflê voor die regterlike beampte wat oor die verrigtinge voorsit:

'Ek, ..., verklaar hierby onder eed/bevestig plegtig en opreg dat, wanneer ek ook al gevra mag word om die werksaamhede van 'n tussenganger te verrig, ek waar en korrek, na die beste van my kennis en vermoë—

(a) my werksaamhede as 'n tussenganger sal verrig; en

(b) alle vrae aan getuies gestel behoorlik en akkuraat sal oordra en, waar nodig, die algemene strekking van enige vraag aan die getuie sal oordra, tensy andersins deur die hof gelas'.

(2) *(a)* Behoudens subartikel (3), voordat 'n persoon aangestel word om die werksaamhede van 'n tussenganger in 'n Hoër Hof te verrig, moet die regterlike beampte wat oor die verrigtinge voorsit ondersoek doen na die bevoegdheid van die persoon om as 'n tussenganger aangestel te word.

(b) Die ondersoek beoog in paragraaf *(a)*, moet insluit, maar is nie beperk nie tot, die persoon se—

(i) geskiktheid as 'n persoon om 'n tussenganger te wees;

(ii) ervaring, wat betrekking het op die rol en werksaamhede van 'n tussenganger;

(iii) kwalifikasies;

(iv) kennis, wat betrekking het op die rol en werksaamhede van 'n tussenganger;

(v) taal- en kommunikasievaardighede; en

(vi) vermoë om met 'n getuie onder die biologiese of verstandelike ouderdom van 18 jaar of 'n getuie wat aan 'n fisieke, sielkundige, verstandelike of emosionele toestand ly, of 'n getuie wat 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act, 2006', as 'older person' omskryf, te werk.

(3) *(a)* Die hoof van 'n hof kan, na goeddunke en nadat 'n ondersoek in subartikel (2) gedoen is, 'n sertifikaat in die vorm deur die Minister by kennisgewing in die *Staatskoerant* voorgeskryf, uitreik aan 'n persoon wat hy of sy bevoeg bevind het om as 'n tussenganger in 'n Hoër Hof te verskyn.

(b) Voordat die hoof van 'n hof 'n sertifikaat bedoel in paragraaf *(a)* uitreik, moet hy of sy die persoon wat bevoeg bevind is om as 'n tussenganger aangestel te word, die eed of plegtige verklaring in subartikel (1) bedoel laat aflê en die sertifikaat endosseer met 'n verklaring van die feit dat dit afgeneem of gemaak is voor hom of haar en van die datum waarop dit aldus afgeneem of gemaak is en sy of haar handtekening daarop aanbring.

(c) 'n Sertifikaat beoog in paragraaf *(a)* kan aanvaar word as bewys van die—

(i) bevoegdheid van 'n persoon om as tussenganger aangestel te word; en

(ii) of the fact that the person has taken the oath or made the affirmation contemplated in subsection (1),

for purposes of this section, in any subsequent proceedings in terms of this Act, before a Superior Court and it is not necessary for the presiding judicial officer presiding over the proceedings in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary.

(d) Paragraph *(c)* must not be construed as prohibiting a judicial officer who presides over proceedings in a Superior Court from holding an enquiry, at any stage of proceedings, regarding the competence of a person to act as an intermediary.

Evidence through remote audiovisual link in proceedings other than criminal proceedings

37C. (1) A Superior Court may, on application by any party to proceedings before that court or of its own accord, order that a witness, irrespective of whether the witness is in or outside the Republic, if the witness consents thereto, give evidence by means of audiovisual link.

(2) A court may make an order contemplated in subsection (1) only if—

(a) it appears to the court that to do so would—

(i) *(aa)* prevent unreasonable delay;

(bb) save costs;

(cc) be convenient; or

(dd) prevent the likelihood that any person might be prejudiced or harmed if he or she testifies or is present at such proceedings; and

(ii) otherwise be in the interests of justice;

(b) facilities therefor are readily available or obtainable at the court; and

(c) the audiovisual facilities that are used by the witness or at the court enable—

(i) persons at the courtroom to see, hear and interact with the witness giving evidence; and

(ii) the witness who gives evidence to see, hear and interact with the persons at the courtroom.

(3) The court may make the giving of evidence in terms of subsection (1) subject to such conditions as it may deem necessary in the interests of justice.

(4) The court must provide reasons for—

(a) allowing or refusing an application by any of the parties; or

(b) its order and any objection raised by the parties against the order,

as contemplated in subsection (1).

(5) For purposes of this Act, a witness who gives evidence by means of audiovisual link, is regarded as a witness who was subpoenaed to give evidence in the court in question.

(6) For purposes of this section 'audiovisual link' means facilities that enable both audio and visual communications between a witness and persons at a courtroom in real-time as they take place.''.

Short title and commencement

19. This Act is called the Criminal and Related Matters Amendment Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(ii) feit dat die persoon die eed of plegtige verklaring afgelê het soos in subartikel (1) beoog,

by die toepassing van hierdie artikel, in enige daaropvolgende verrigtinge ingevolge hierdie Wet, voor 'n Hoër Hof en is dit nie nodig vir die voorsittende regterlike beampte wat oor die betrokke verrigtinge voorsit, om die eed of plegtige verklaring af te neem nie of om 'n ondersoek te doen na die bevoegdheid van 'n persoon om as 'n tussenganger aangestel te word nie.

(d) Paragraaf *(c)* moet nie uitgelê word nie dat dit 'n regterlike beampte wat oor verrigtinge in 'n Hoër Hof voorsit sou verbied om 'n ondersoek te doen, te eniger tyd tydens die verrigtinge, na die bevoegdheid van 'n persoon om as 'n tussenganger op te tree.

Getuienis deur afstand- oudiovisuele skakel in verrigtinge wat nie strafregtelike verrigtinge is nie

37C. (1) 'n Hoër Hof kan, op aansoek deur enige party tot verrigtinge voor daardie hof of uit eie beweging, gelas dat 'n getuie, hetsy daardie getuie binne of buite die Republiek is, indien die getuie daartoe toestem, by wyse van oudiovisuele skakel mag getuig.

(2) 'n Hof kan slegs 'n bevel bedoel in subartikel (1) gee indien—

(a) dit vir die hof blyk dat om dit aldus te doen dit—

(i) *(aa)* onredelike vertraging sal voorkom;

(bb) koste sal spaar;

(cc) gerieflik sal wees; of

(dd) die waarskynlikheid sal voorkom dat enige persoon benadeel of leed aangedoen kan word as hy of sy by sodanige verrigtinge getuig of teenwoordig is; en

(ii) andersins in die belang van geregtigheid sal wees;

(b) fasiliteite daarvoor geredelik by die hof beskikbaar of verkrygbaar is; en

(c) die oudiovisuele fasiliteite wat deur die getuie of by die hof gebruik word—

(i) persone by die hofsaal in staat stel om die getuie wat getuienis aflê te sien, te hoor en met hom of haar te kommunikeer; en

(ii) die getuie wat die getuienis aflê, in staat stel om die persone by die hofsaal te sien, te hoor en met hulle te kommunikeer.

(3) Die hof kan die aflê van getuienis ingevolge subartikel (1) onderhewig maak aan sodanige voorwaardes wat die hof nodig mag ag in die belang van geregtigheid.

(4) Die hof moet redes verskaf vir—

(a) die toestaan of weiering van 'n aansoek deur enige van die partye; of

(b) sy bevel en enige beswaar deur die partye teen die bevel gemaak, soos in subartikel (1) beoog.

(5) By die toepassing van hierdie Wet, word 'n getuie wat by wyse van 'n oudiovisuele skakel getuienis aflê, geag 'n getuie te wees wat gedagvaar is om voor die betrokke hof getuienis af te lê.

(6) By die toepassing van hierdie artikel, beteken 'oudiovisuele skakel' fasiliteite wat beide oudio- en visuele kommunikasies tussen 'n getuie en persone by 'n hofsaal intyds soos dit plaasvind, moontlik maak.''.

Kort titel en inwerkingtreding

19. Hierdie Wet heet die Wysigingswet op die Strafreg en Verwante Aangeleenthede, 2021, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* vasgestel.

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