



REPUBLIC OF SOUTH AFRICA

1997-12-20

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 390

CAPE TOWN, 10 DECEMBER 1997

No. 18501

KAAPSTAD, 10 DESEMBER 1997

OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1641. 10 December 1997

No. 1641. 10 Desember 1997

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

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

No. 85 of 1997: Criminal Procedure Second Amendment Act. 1997.

No. 85 van 1997: Tweede Strafproseswysigingswet. 1997.

(b) A person who is in detention as contemplated in paragraph (a) shall, as soon as reasonably possible, be informed of his or her right to institute bail proceedings.

(c) Subject to paragraph (d), if such an arrested person is not released by reason that—

(i) no charge is to be brought against him or her: or
 (ii) bail is not granted to him or her in terms of section 59 or 59A. he or she shall be brought before a lower court as soon as reasonably possible, but not later than 48 hours after the arrest.

(d) If the period of 48 hours expires—

- (i) outside-ordinary court hours or on a day which is not an ordinary court day, the accused shall be brought before a lower court not later than the end of the first court day;
- (ii) or will expire at, or if the time at which such period is deemed to expire under subparagraph (i) or (iii) is or will be, a time when the arrested person cannot, because of his or her physical illness or other physical condition, be brought before a lower court for the purposes of an order for his or her further detention. the court before which he or she would, but for the illness or other condition, have been brought for the purposes of such an order, may, upon the application of the prosecutor, which, if not made before the expiration of the period of 48 hours, may be made at any time before, or on, the next succeeding court day, and in which the circumstances relating to the illness or other condition are set out. supported by a certificate of a medical practitioner, order that the arrested person be detained at a place specified by the court and for such period as the court may deem necessary so that he or she may recuperate and be brought before the court for the purpose of an order for his or her further detention for the purposes of his or her trial or his or her release; or
- (iii) at a time when the arrested person is outside the area of jurisdiction of the lower court to which he or she is being brought for the purposes of further detention and he or she is at such time in transit from a police station or other place of detention to such court, the said period shall be deemed to expire at the end of the court day next succeeding the day on which such arrested person is brought within the area of jurisdiction of such court.

(2) For purposes of this section—

(a) “a court day” means a day on which the court in question normally sits as a court and “ordinary court day” has a corresponding meaning; and

(b) “ordinary court hours” means the hours from 9:00 until 16:00 on a court day.”;

(b) by the substitution for subsection (6) of the following subsection:

(6)(a) At his or her first appearance in court a person contemplated in subsection (1)(a) who-

(i) was arrested for allegedly committing an offence shall, subject to this subsection and section 60-

(au) be informed by the court of the reason for the detention to continue; or

(bb) be charged and be entitled to apply to be released on bail. and if the accused is not so charged or informed of the reason for his or her further detention, he or she shall be released; or

(ii) was not arrested in respect of an offence, shall be entitled to adjudication upon the cause for his or her arrest.

(b) An arrested person contemplated in paragraph (a)(i) is not entitled to be brought to court outside ordinary court hours.

(c) The bail application of a person who is charged with an offence referred to in Schedule 6 shall be considered by a regional court:

Provided that an attorney-general or a prosecutor authorised thereto by him or her may, where such court is, due to exceptional circumstances, not available, whether in general or in any particular case, direct that such bail application shall be considered by any other available lower court within the area of jurisdiction of such regional court.

(d) The lower court before which a person is brought in terms of this subsection, may postpone any bail proceedings or bail application to any date or court, for a period not exceeding seven days at a time, on the terms which the court may deem proper and which are not inconsistent with any provision of this Act, if—

- (i) the court is of the opinion that it has insufficient information or evidence at its disposal to reach a decision on the bail application;
- (ii) the prosecutor informs the court that the matter has been or is going to be referred to an attorney-general for the issuing of a written confirmation referred to in section 60(11A);
- (iii) the prosecutor informs the court that the person is going to be charged with an offence referred to in Schedule 6 and that the bail application is to be heard by a regional court;
- (iv) it appears to the court that it is necessary to provide the State with a reasonable opportunity to—
 - (aa) procure material evidence that may be lost if bail is granted; or
 - (bb) perform the functions referred to in section 37; or
- (v) it appears to the court that it is necessary in the interests of justice to do so”; and

(c) by the deletion of subsection (7).

Amendment of section 58 of Act 51 of 1977

2. Section 58 of the principal Act is hereby amended by the addition of the following proviso:

“: Provided that where a court convicts an accused of an offence contemplated in Schedule 5 or 6, the court shall, in considering the question whether the accused’s bail should be extended, apply the provisions of section 60(11)(a) or (b), as the case may be, and the court shall take into account—

- (a) the fact that the accused has been convicted of that offence; and
- (b) the likely sentence which the court might impose.”.

Insertion of section 59A in Act 51 of 1977

3. The following section is hereby inserted in the principal Act after section 58:

“Attorney-general may authorise release on bail

59.4. (1) An attorney-general, or a prosecutor authorised thereto in writing by the attorney-general 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.

(2) For the purposes of exercising the functions contemplated in subsections (1) and (3) an attorney-general 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 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 or prosecutor concerned and the release shall endure until he or she so appears before the court on the first court day.

(5) The court before which a person appears in terms of subsection (4)—
 (a) may extend the bail on the same conditions or amend such conditions or add further conditions as contemplated in section 62: or
 (b) shall, if the court does not deem it appropriate to exercise the powers contemplated in paragraph (a), consider the bail application and, in considering such application, the court has the jurisdiction relating to the powers, functions and duties in respect of bail proceedings in terms of section 60.

(6) The provisions of section 64 with regard to the recording of bail proceedings by a court apply, with the necessary changes, in respect of bail granted in terms of this section.

(7) For all purposes of this Act, but subject to the provisions of this section, bail granted in terms of this section shall be regarded as bail granted by a court in terms of section 60.”

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995

4. Section 60 of the principal Act is hereby amended—

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

“(b) **[If]** Subject to the provisions of section 50(6)(b), if a court refers an accused to another court for trial or sentencing, the court referring the accused retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.”;

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

“(2) In bail proceedings the court **[may]**—
 (a) **may** postpone any such proceedings as contemplated in section 50(6) **[or (7)]**;
 (b) **may**, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;
 (c) **may**, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced;
 (d) **shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (1)(a) and (b), require of the prosecutor to place on record the reasons for not opposing the bail application.**”;

(c) by the substitution for paragraph (a) of subsection (4) 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 or any particular person **[or the public interest]** or will commit a Schedule 1 offence; or”;

(d) by the addition to subsection (4) of the following paragraph:

“(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security; or”;

(e) by the insertion after subsection (8) of the following subsection:

“(8A) In considering whether the ground in subsection (J)(e) has been established, the court may, where applicable, take into account the following factors, namely—

- (a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;
- (b) whether the shock or outrage of the community might lead to public disorder if the accused is released;
- (c) whether the safety of the accused might be jeopardized by his or her release;
- (d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;
- (e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system: or
- (f) any other factor which in the opinion of the court should be taken into account.”;
- (f) by the substitution for subsection (11) of the following subsection: 15
- “(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to—
- (a) 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) 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.”;
- (g) by the insertion after subsection (11) of the following subsections: 30
- “(11A)(a) If the attorney-general intends charging any person with an offence referred to in Schedule 5 or 6 the attorney-general 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. 35
- (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 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. 40
- (11B) (a) In bail proceedings the accused, or his or her legal adviser. is compelled to inform the court whether— 45
- (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.
- (b) Where the legal adviser of an accused on behalf of the accused submits the information contemplated in paragraph (a), whether in writing or orally, the accused shall be required by the court to declare whether he or she confirms such information or not. 50
- (c) The record of the bail proceedings, excluding the information in paragraph (a), shall form part of the record of the trial of the accused following upon such bail proceedings: Provided that if the accused elects to testify during the course of the bail proceedings the court must inform him or her of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings. 55
- (d) An accused who wilfully— 60

- (i) fails or refuses to comply with the provisions of paragraph (a); or
(ii) furnishes the court with false information required in terms of paragraph (a).
shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”: and 5
- (h) by the addition of the following subsection:
“(14) Notwithstanding any law to the contrary, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in or forms part of a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the prosecutor otherwise directs: 10
Provided that this subsection shall not be construed as denying an accused access to any information, record or document to which he or she may be entitled for purposes of his or her trial.”. 15

Substitution of section 64 of Act 51 of 1977, as substituted by section 6 of Act 75 of 1995

5. The following section is hereby substituted for section 64 of the principal Act:

“Proceedings with regard to **bail and conditions to be recorded in full**

64. The court dealing with bail proceedings as contemplated in section 50(6) or which considers bail under section 60 or which imposes any further condition under section 62 or which, under section 63, amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof, or shall cause such proceedings to be recorded in full, and where such court is a magistrate’s court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such conditions or any amendment or supplementation thereof.”. 20
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Substitution of section 68 of Act 51 of 1977, as substituted by section 10 of Act 75 of 1995 35

6. The following section is hereby substituted for section 68 of the principal Act:

“Cancellation of bail

68. (1) Any court before which a charge is pending in respect of which [the accused **has been released on**] bail has been granted may, whether the accused has been released or not, upon information on oath that— 40
(a) the accused is about to evade justice or is about to abscond in order to evade justice; **[or that]**
(b) the accused **[interferes or threatens or attempts]** has interfered or threatened or attempted to interfere with witnesses; **[or that]**
(c) the accused **[defeats]** has defeated or attempted to defeat the ends of justice; **[or that he or she]** 45
(d) the accused poses a threat to the safety of the public or of a particular person; **[or that]**
(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; 50

- (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 **[public interest]** interests of justice to do so. 5
 issue a warrant for the arrest of the accused and make such order as it may **[seem]** deem proper, including an order that the bail be cancelled and that the 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— 10
- (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: **[or that]** 15
- (ii) the accused [interferes or threatens or attempts] has interfered or threatened or attempted to interfere with witnesses: [or that]
- (iii) the accused [defeats] has defeated or attempted to defeat the ends of justice; or [that he or she]
- (iv') the accused poses a threat to the safety of the public or of a particular person; [or that] 20
- (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; 25
- (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) it is in the **[public interest]** interests of justice to do so, 30
 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 35
 the bail.”.

Insertion of section 72A in Act 51 of 1977

7. The following section is hereby inserted in the principal Act after section 72:

“Cancellation of release on warning

72A. Notwithstanding the provisions of section 72(4), the provisions of section 68(1) and (2) in respect of an accused who has been granted bail, are, with the necessary changes, applicable in respect of an accused who has been released on warning.”. 40

Amendment of section 75 of Act 51 of 1977, as amended by section 3 of Act 51 of 1979 and section 9 of Act 33 of 1986 45

8. Section 75 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The court before whom an accused appears for the purposes of a bail application shall, at the conclusion of the bail proceedings or at any stage thereafter, but before the accused has pleaded, refer such accused to a court designated by the prosecutor for purposes of trial.”. 50

Substitution of Schedule 5 to Act 51 of 1977, as added by section 14 of Act 75 of 1995

9. The following Schedule is hereby substituted for Schedule 5 to the principal Act:

“SCHEDULE 5

(Sections 58 and 60(11) and (11A) and Schedule 6)

Treason.	5
Murder.	
Attempted murder involving the infliction of grievous bodily harm.	
Rape.	
Any offence referred to in section 13(f) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), if it is alleged that—	10
(a) the value of the dependence-producing substance in question is more than R50 000,00; or	
(b) the value of the dependence-producing substance in question is more than R 10000,00 and that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or	15
(c) the offence was committed by any law enforcement officer.	
Any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament, or the possession of an automatic or semi-automatic firearm, explosives or armament.	20
Any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), on account of being in possession of more than 1000 rounds of ammunition intended for firing in an arm contemplated in section 39(2)(a)(i) of that Act.	
Any offence relating to exchange control, corruption, extortion, fraud, forgery, uttering or theft—	25
(a) involving amounts of more than R500 000,00; or	
(b) involving amounts of more than R100 000,00, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or	30
(c) if it is alleged that the offence was committed by any law enforcement officer—	
(i) involving amounts of more than R100 000,00; or	
(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.	35
Indecent assault on a child under the age of 16 years.	
An offence referred to in Schedule 1—	
(a) and the accused has previously been convicted of an offence referred to in Schedule 1; or	40
(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 1.”	

Addition of Schedules 6 and 7 to Act 51 of 1977

10. The following Schedules are hereby added to the principal Act:

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“SCHEDULE 6

(Sections 50(6), 58 and 60(11) and (11A))

Murder. when—	
(a) it was planned or premeditated:	5
(b) the victim was—	
(i) a law enforcement officer performing his or her functions as such, whether on duty or not. or a law enforcement officer who was killed by virtue of his or her holding such a position; or	10
(ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1;	
(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences:	15
(i) Rape; or	
(ii) robbery with aggravating circumstances: or	
(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.	20
Rape—	
(a) when committed—	
(i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;	25
(ii) by more than one person. where such persons acted in the execution or furtherance of a common purpose or conspiracy;	
(iii) by a person who is charged with having committed two or more offences of rape: or	30
(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 girl under the age of 16 years;	35
(ii) is a physically disabled woman who, due to her physical disability, is rendered particularly vulnerable; or	
(iii) is a mentally ill woman as contemplated in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973);	
(c) involving the infliction of grievous bodily harm.	40
Robbery. involving—	
(a) the use by the accused or any co-perpetrators or participants of a firearm;	
(b) the infliction of grievous bodily harm by the accused or any of the co-perpetrators or participants; or	45
(c) the taking of a motor vehicle.	
Indecent assault on a child under the age of 16 years, involving the infliction of grievous bodily harm.	
An offence referred to in Schedule 5—	
(a) and the accused has previously been convicted of an offence referred to in Schedule 5 or this Schedule; or	50
(b) which was allegedly committed whilst he or she was released on bail in respect of an offence referred to in Schedule 5 or this Schedule.	

SCHEDULE 7**(Section 60(6)(b))**

Public violence.	
Culpable homicide.	
Bestiality.	5
Assault. involving the infliction of grievous bodily harm.	
Arson.	
Housebreaking, whether under the common law or a statutory provision. with intent to commit an offence.	
Malicious injury to property.	10
Robbery, other than a robbery with aggravating circumstances. if the amount involved in the offence does not exceed R20 000.00.	
Theft and any offence referred to in section 264(1)(a),(b)and(c). if the amount involved in the offence exceeds R2 000,00 but does not exceed R20 000.00.	15
Any offence in terms of any law relating to the illicit possession of dependence-producing drugs.	
Any offence relating to extortion. fraud, forgery or uttering if the amount of value involved in the offence does not exceed R20 000.00.	
Any conspiracy. incitement or attempt to commit any offence referred to in <u>this Schedule.</u> "	20

Short title and commencement

12. This Act shall be called the Criminal Procedure Second Amendment Act, 1997. and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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