

CRIMINAL PROCEDURE SECOND AMENDMENT ACT

OFFICE OF THE PRESIDENT

No. 1474. 21 September 1995

NO. 75 OF 1995: CRIMINAL PROCEDURE SECOND AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Criminal Procedure Act, 1977, so as to further regulate the detention of arrested persons; to make provision for accused persons to be entitled to be released on bail in certain circumstances to give a court a discretion to postpone bail proceedings in certain circumstances; to empower a court to, in respect of certain serious offences, order the accused to satisfy the court that the interests of justice do not require his or her detention in custody; to empower the attorney-general to appeal against the decision of a court to release an accused on bail and the imposition of bail conditions; to set out the factors which should be taken into account in considering bail; to further regulate bail proceedings; to revoke the power of an attorney-general to prevent the granting of bail in certain cases; to render the non-appearance of persons who are on bail in certain cases and the non-compliance of bail conditions punishable; to further regulate the cancellation of bail; to empower a superior court to consider the granting of bail after the refusal of such an application in a magistrate's court where an accused is standing trial in the superior court; and to make the bail-related provisions in the Criminal Procedure Act, 1977, as amended, applicable in the whole of the national territory; and to provide for matters connected therewith.

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

Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979 and section 37 of Act 122 of 1991

1. Section 50 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution for subsection (3) of the following subsection: "(3) Subject to the provisions of subsections (6) and (7), nothing in this section shall be construed as modifying the provisions of this Act or any other law whereby a person under detention may be released on bail or on warning or on a written notice to appear in court."; and

(b) by the addition of the following subsections:

"(6) When a person is arrested for the alleged commission of an offence, he or she shall be informed as soon as possible of his or her right to institute bail proceedings and, if he or she is not granted bail under section 59, he or she shall at his or her request be brought before a lower court as soon as it is

reasonably possible for consideration of his or her bail application: Provided that the court may postpone any bail proceedings to any date, 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

(a) the court is of the opinion that it has insufficient information or evidence at its disposal to reach a decision on the bail application; or

(b) it appears to the court that it is necessary to provide the State with a reasonable opportunity to

(i) procure material evidence that may be lost if bail is granted;

(ii) perform the functions referred to in section 37; or

(c) it appears to the court that it is necessary in the interests of justice to do so.

(7) If a person is arrested on suspicion of having committed an offence, but a charge has not been brought against him or her because further investigation is needed to determine whether a charge may be brought against him or her, the investigation in question shall be completed as soon as it is reasonably possible and the person in question shall as soon as it is reasonably possible thereafter, and in any event not later than the day after his or her arrest contemplated in subsections (1) and (2), be brought before an ordinary court of law to be charged and enabled to institute bail proceedings in accordance with subsection (6) or be informed of the reason for his or her further detention, failing which he or she shall be released."

Amendment of section 59 of Act 51 of 1977, as amended by section 3 of Act 26 of 1987 and section I of Act 126 of 1992

2. Section 59 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) An accused who is in custody in respect of any offence, other than an offence referred to in Part 11 or Part III of Schedule 2 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 [a] police station the sum of money determined by such police official."

Substitution of section 60 of Act 51 of 1977, as amended by section 2 of Act 56 of 1979 and section 2 of Act 64 of 1982

3. The following section is hereby substituted for section 60 of the principal Act:

"Bail application of accused in court

60. (1)(a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6) and (7), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, unless the court finds that it is in the interests of justice that he or she be detained in custody.

(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.

(c) If the question of the possible release of the accused on bail is not raised by the accused or the prosecutor, the court shall ascertain from the accused whether he or she wishes that question to be considered by the court.

(2) In bail proceedings the court may

(a) postpone any such proceedings as contemplated in section 50(6) or (7);

(b) 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) 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.

(3) If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the presiding officer shall order that such information or evidence be placed before the court.

(4) The refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established:

(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 I offence; or

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardies the objectives or the proper functioning of the criminal justice system, including the bail system.

(5) In considering whether the ground in subsection (4)(a) has 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 any person;

(c) any resentment the accused is alleged to harbour against any 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 offences referred to in Schedule 1, 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 referred to in Schedule I while released on bail; or

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

(6) In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors, namely

(a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;

(b) the assets held by the accused and where such assets are situated;

(c) the means, and travel documents held by the accused, which may enable him or her to leave the country;

(d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial;

(f) the nature and the gravity of the charge on which the accused is to be tried;

(g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached;

or

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

(7) In considering whether the ground in subsection (4)(c) has been established, the court may, where applicable, take into account the following factors, namely (a) (a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify;

(c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(f) whether the accused has access to evidentially material which is to be presented at his or her trial;

(g) the ease with which evidentially material could be concealed or destroyed; or

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

(8) In considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors, namely

(a) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;

(b) whether the accused is in custody on another charge or whether the accused is on parole;

(c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or

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

(9) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely

(a) the period for which the accused has already been in custody since his or her arrest;

(b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(d) any financial loss which the accused may suffer owing to his or her detention;

(e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused; the state of health of the accused; or

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

(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.

(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to

(a) in Schedule 5;

(b) in Schedule 1, which was allegedly committed whilst he or she was released on bail in respect of a Schedule I offence, 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, satisfies the court that the interests of justice do not require his or her detention in custody.

(12) 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.

(13) The court releasing an accused on bail in terms of this section, may order that the accused

(a) deposit with the clerk of the court or the registrar of the court, as the case may be, or with a

correctional official at the prison where the accused is in custody or with a police official at the place where the accused is in custody, the sum of money determined by the court in question; or

(b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 63(1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State."

Repeal of section 61 of Act 51 of 1977

4. Section 61 of the principal Act is hereby repealed.

Amendment of section 63 of Act 51 of 1977

5. Section 63 of the principal Act is hereby amended by the substitution for subsection

(1) of the following subsection:

"(1) Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined under section 59 or 60 or amend or supplement any condition imposed under section 60 or 62, whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application."

Substitution of section 64 of Act 51 of 1977

6. 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 which considers [an application for] 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."

Insertion of section 65A in Act 51 of 1977

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

"Appeal by attorney-general against decision of court to release accused on bail

65A. (1)(a) The attorney-general may appeal to the superior court having jurisdiction, against the decision of a lower court to release an accused on bail or against the imposition of a condition of bail as contemplated in section 65(1)(a).

(b) The provisions of section 31 OA in respect of an application or appeal referred to in that section by an attorney-general, and the provisions of section 65(1)(b) and (c) and (2), (3) and (4) in respect of an

appeal referred to in that section by an accused, shall apply mutatis mutandis with reference to a case in which the attorney-general appeals in terms of paragraph (a) of this subsection.

(2)(a) The attorney-general may appeal to the Appellate Division against a decision of a superior court to release an accused on bail.

(b) 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 appeals in terms of paragraph (a) of this subsection.

(c) Upon an appeal in terms of paragraph (a) or an application referred to in paragraph (b) brought by an attorney-general, 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.

(3) If the appeal of the attorney-general in terms of subsection (1)(a) or (2)(a) is successful, the court hearing the appeal shall issue a warrant for the arrest of the accused."

Amendment of section 66 of Act 51 of 1977

8. Section 66 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If an accused is released on bail subject to any condition imposed under section 60 or 62, including any amendment or supplementation under section 63 of a condition of bail, and the prosecutor applies to the court before which the charge with regard to which the accused has been released on bail is pending, to lead evidence to prove that the accused has failed to comply with such condition, the court shall, if the accused is present and denies that he or she failed to comply with such condition or that his or her failure to comply with such condition was due to fault on his or her part, proceed to hear such evidence as the prosecutor and the accused may place before it."

Insertion of section 67A in Act 51 of 1977

9. The following section is hereby inserted in the principal Act after section 67:

"Criminal liability of a person who is on bail on the ground of failure to appear or to comply with a condition of bail

67A. Any person who has been released on bail and who fails without good cause to appear on the date and at the place determined for his or her appearance, or to remain in attendance until the proceedings in which he or she must appear have been disposed of, or who fails without good cause to comply with a condition of bail imposed by the court in terms of section 60 or 62, including an amendment or supplementation thereof in terms of section 63, shall be guilty of an offence and shall on conviction be liable to a fine or to imprisonment not exceeding one year."

Substitution of section 68 of Act 51 of 1977

10. 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 may, upon information on oath that the accused is about to evade justice or is about to abscond in order to evade justice, or that the accused interferes or threatens or attempts to interfere with witnesses, or that the accused defeats the ends of justice or that he or she poses a threat to the safety of the public or of a particular person, or that it is in the public interest to do so, issue a warrant for the arrest of the accused and make such order as it may seem 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 he or she has reason to believe that 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 the accused interferes or threatens or attempts to interfere with witnesses or that the accused defeats the ends of justice, or that he or she poses a threat to the safety of the public or of a particular person, or that it is in the public interest 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."

Substitution of section 70 of Act 57 of 1979

11. The following section is hereby substituted for section 70 of the principal Act:

"Remission of bail money

70. The Minister or any officer acting under his or her authority or the court concerned may **[in his discretion,]** remit the whole or any part of any bail money forfeited under section 66 or 67.

Amendment of section 307 of Act 51 of 1977, as amended by section 17 of Act 56 of 1979 and section 8 of Act 64 of 1982

12. Section 307 of the principal Act is hereby amended-

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

"(b) if such person was not so released on bail **[and the attorney-general has not in terms of section 61 objected to the granting of bail to such person]**, release him or her on bail on condition that he or she deposits with the clerk of the court or with a member of the prisons service at the prison where such person is in custody or with any police official at the place where such convicted person is in custody, the sum of money determined by the court in question; or";

"(b) by the insertion after subsection (3) of the following subsection:

"(3A) (a) If the order contemplated in subsection (3)(b) is not served on the convicted person within 14 days of the issuing thereof because he or she cannot be found at the address given by him or her at the time of the granting of bail to him or her, the bail shall be provisionally cancelled and the bail money provisionally forfeited and a warrant for his or her arrest shall be issued.

(b) The provisions of section 67(2) in respect of the confirmation or the lapsing of the provisional cancellation of bail or the forfeiture of bail money, and making final the provisional forfeiture of bail money, the provisions of section 67(3) in respect of the hearing of evidence, and the provisions of section 70 in respect of the remission of forfeited bail money, shall apply mutatis mutandis in respect of bail pending review.", and

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

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

Amendment of section 309 of Act 51 of 1977, as amended by section 17 of Act 105 of 1982, section 8 of Act 107 of 1990 and section 51 of Act 129 of 1993

13. Section 309 of the principal Act is hereby amended by the addition after subsection (4) of the following subsection:

"(5) When a provincial or local division of the Supreme Court gives a decision on appeal against a decision of the magistrate's court and the former decision is appealed against, such division of the Supreme Court has the powers in respect of the granting of bail which a magistrate's court has in terms of section 307."

Addition of Schedule to Act 51 of 1977

14. The following Schedule is hereby added to the principal Act:

SCHEDULE 5

(Section 60(11))

Treason.

Murder, involving the use of a dangerous weapon or firearm as defined in the Dangerous Weapons Act, 1968 (Act No. 71 of 1968).

Rape.

Robbery with aggravating circumstances and robbery of a motor vehicle.

Any offence referred to in sections 13(f) and 14(b) of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992).

Any statutory offence relating to the trafficking of, dealing in or smuggling of firearms, explosives or armament, or the possession of an automatic or semi-automatic firearm, explosives or armament.

Any offence relating to exchange control, corruption, fraud, forgery, uttering or theft involving amounts in excess of R500 000,00.

Transitional provisions

15. (1) Any provision contained in any other law that is in respect of bail inconsistent with the provisions of sections 37, 50, 58 up to and including 71, 72, 141, 144, 170, 304, 307, 308, 308A and 321 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as amended by this Act, shall be deemed to be amended to the extent of the inconsistency thereof.

(2) Notwithstanding the provisions of subsection (1), bail proceedings which have commenced before the date of commencement of this Act in any superior court, regional court or magistrate's court shall, if such proceedings have at that date not been concluded, be continued and concluded as if subsection (1)

has not come into operation.

Short title

16. This Act shall be called the Criminal Procedure Second Amendment Act, 1995.