

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly)) (The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 63B—2000]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP GEREGTELIKE AANGELEENTHEDE

*(Soos gewysig deur die Portefeuljekomitee oor Justisie en Staatkundige Ontwikkeling
(Nasionale Vergadering)) (Die Afrikaanse teks is die amptelike vertaling van die
Wetsontwerp)*

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 63B—2000]

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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.

BILL

To amend the Magistrates' Courts Act, 1944, so as to further regulate the appointment of judicial officers; to amend the General Law Amendment Act, 1955, so as to remove a reverse onus; to amend the Stock Theft Act, 1959, so as to provide anew for the jurisdiction of magistrates' courts in respect of sentence; to amend the Supreme Court Act, 1959, consequentially; to amend the Administration of Estates Act, 1965, so as to substitute an obsolete expression; to amend the Criminal Procedure Act, 1977, so as to delete a definition; to further regulate the hearing of bail proceedings; to repeal an obsolete provision; to effect certain consequential amendments; and to further regulate the granting of bail; to amend the Attorneys Act, 1979, so as to insert a new definition and to substitute another; to provide for the recovery of costs by law clinics; and to make new provision regarding the constitution and quorum of the Attorneys Fidelity Fund Board of Control; to amend the Rules Board for Courts of Law Act, 1985, so as to delete a certain definition; to further regulate the powers of the Rules Board for Courts of Law; and to effect certain technical changes; to amend the Game Theft Act, 1991, so as to make new provision regarding the jurisdiction of magistrates' courts in respect of sentence; to amend the Magistrates Act, 1993, so as to make new provision for the composition of the Magistrates Commission; to amend the Magistrates' Courts Amendment Act, 1993, so as to repeal an obsolete provision; to amend the Special Investigating Units and Special Tribunals Act, 1996, so as to further regulate legal representation on behalf of a Special Investigating Unit; and to further regulate the powers and functions of a Special Tribunal; to amend the Criminal Law Amendment Act, 1997, so as to further regulate the imposition of minimum sentences for certain serious offences; so as to further regulate the committal of an accused for the imposition of sentence by a High Court after conviction in a regional court; and to provide that the court of a regional division retains its jurisdiction to try offences referred to in Part I of Schedule 2 to that Act; and to provide for matters connected therewith.

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

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993, section 3 of Act 104 of 1996 and section 3 of Act 66 of 1998

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1. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) ~~[No]~~ A person ~~[holding any appointment under subsection (1) shall perform the functions of a]~~ appointed as judicial officer ~~[in any magistrate's court, unless he has taken]~~ under this section shall, before commencing with his or her functions in terms of this Act for the first time, take an oath or ~~[made]~~ make an affirmation subscribed by him or her, in the form set out below~~], namely—~~]:

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‘I,
(full name)

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do hereby swear/solemnly ~~[and sincerely]~~ affirm ~~[and declare that whenever I may be called upon to perform the functions of]~~ that in my capacity as a judicial officer ~~[in any magistrate's court]~~ I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice ~~[and, as the circumstances of any particular case may require]~~, in accordance with the Constitution and the law ~~[and customs of the Republic of South Africa or of the territory of South-West Africa]~~.’ ”.

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Amendment of section 37 of Act 62 of 1955, as amended by section 31 of Act 80 of 1964 and section 4 of Act 18 of 1996

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2. Section 37 of the General Law Amendment Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) Any person who in any manner, otherwise than at a public sale, acquires or receives into his or her possession from any other person stolen goods, other than stock or produce as defined in section one of the Stock Theft Act, 1959, without having reasonable cause ~~[, proof of which shall be on such first-mentioned person,]~~ for believing at the time of such acquisition or receipt that such goods are the property of the person from whom he or she receives them or that such person has been duly authorized by the owner thereof to deal with or to dispose of them, shall be guilty of an offence and liable on conviction to the penalties which may be imposed on a conviction of receiving stolen property knowing it to have been stolen except in so far as the imposition of any such penalty may be compulsory.
(b) In the absence of evidence to the contrary which raises a reasonable doubt, proof of such possession shall be sufficient evidence of the absence of reasonable cause.”.

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Repeal of section 13 of Act 57 of 1959

3. Section 13 of the Stock Theft Act, 1959, is hereby repealed.

Substitution of section 14 of Act 57 of 1959, as substituted by section 2 of Act 32 of 1986 and amended by section 5 of Act 28 of 1990

4. The following section is hereby substituted for section 14 of the Stock Theft Act, 1959:

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“Jurisdiction of magistrates' courts in respect of sentence

14. Notwithstanding anything to the contrary in any law, any magistrates' court may, in respect of an offence under this Act—

- (a) where the court is not a court of a regional division, impose a fine or imprisonment for a period not exceeding three years; or
(b) where the court is a court of a regional division, impose a fine or imprisonment for a period not exceeding fifteen years.”.

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Amendment of section 12 of Act 59 of 1959, as amended by section 1 of Act 46 of 1980 and section 4 of Act 105 of 1982

5. Section 12 of the Supreme Court Act, 1959, is hereby amended by the substitution in subsection (1) for paragraph (bA) of the following paragraph:

“(bA) the Chief Justice or, in his or her absence, the senior available judge of the appellate division may direct that an appeal in a criminal or civil matter [**save a criminal matter arising out of proceedings instituted before a special criminal court constituted under section 148 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),**] be heard before a court consisting of three judges;”.

Amendment of section 72 of Act 66 of 1965, as amended by section 7 of Act 54 of 1970, section 17 of Act 70 of 1979 and section 3 of Act 192 of 1993

6. Section 72 of the Administration of Estates Act, 1965, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) by the mother of **[an illegitimate]** a minor born out of wedlock who has not been so deprived of the guardianship of such minor or of her parental powers over him or her; or”.

Amendment of section 1 of Act 51 of 1977, as amended by section 1 of Act 107 of 1990, section 1 of Act 5 of 1991, section 35 of Act 122 of 1991, section 16 of Act 116 of 1993, section 38 of Act 129 of 1993, section 4 of Act 18 of 1996, section 1 of Act 49 of 1996 and section 137 of Act 111 of 1998

7. Section 1 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of the definition of “special superior court”.

Amendment of section 50 of Act 51 of 1977, as amended by section 1 of Act 56 of 1979, section 37 of Act 122 of 1991, section 1 of Act 75 of 1995, section 1 of Act 85 of 1997 and section 3 of Act 34 of 1998

8. (1) Section 50 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of **[subsections (6) and (7)]** subsection (6), 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.”;

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

“(c) The bail application of a person who is charged with an offence referred to in Schedule 6 **[shall]** must be considered by a **[regional]** magistrate’s court: Provided that **[an attorney-general]** the Director of Public Prosecutions concerned, or a prosecutor authorised thereto in writing 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]** if he or she deems it expedient or necessary for the administration of justice in a particular case, direct in writing that the application must be considered by a regional court.”;

(c) by the deletion of subsection (6)(d)(iii).

(2) Any bail proceedings in respect of a person who is charged with an offence referred to in Schedule 6 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which have commenced prior to the date of commencement of this Act in a regional court or any other lower court within the area of jurisdiction of such regional court in terms of section 50(6)(c) of that Act and which proceedings have not been concluded at that date, must be continued in, and concluded by, that court as if this Act had not been passed.

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997 and section 5 of Act 34 of 1998

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

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

“(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]** if the court **[finds that it is in the interests of justice that he or she be detained in custody]** is satisfied that the interests of justice so permit.”; and

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“The **[refusal to grant bail and the]** interests of justice do not permit the release from detention of an accused **[in custody shall be in the interests of justice]** where one or more of the following grounds are established.”.

Repeal of section 148 of Act 51 of 1977

10. Section 148 of the Criminal Procedure Act, 1977, is hereby repealed.

Amendment of section 315 of Act 51 of 1977, as substituted by section 20 of Act 105 of 1982 and amended by section 10 of Act 107 of 1990 and section 39 of Act 105 of 1997

11. Section 315 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) In respect of appeals and questions of law reserved in connection with criminal cases heard by a provincial or local division **[or a special superior court]**, the court of appeal shall be the Appellate Division of the Supreme Court (in this Chapter referred to as the Appellate Division), except in so far as subsection (3) otherwise provides.”.

Amendment of section 316 of Act 51 of 1977, as amended by section 21 of Act 105 of 1982 and section 15 of Act 26 of 1987

12. Section 316(1) of the Criminal Procedure Act, 1977, is hereby amended by the deletion of paragraph (a).

Amendment of section 317 of Act 51 of 1977, as amended by section 22 of Act 105 of 1982

13. Section 317 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of subsection (3).

Amendment of section 319 of Act 51 of 1977, as amended by section 24 of Act 105 of 1982

14. Section 319 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The provisions of sections 317(2), **[(3),]** (4) and (5) and 318(2) shall apply *mutatis mutandis* with reference to all proceedings under this section.”.

Amendment of Schedule 2 to Act 51 of 1977, as amended by section 5 of Act 126 of 1992

15. Schedule 2 to the Criminal Procedure Act, 1977, is hereby amended by the substitution in Part II for the—

(a) ninth offence of the following offence:

“Theft, whether under the common law or a statutory provision, receiving stolen property knowing it to have been stolen, fraud, forgery or uttering a forged document knowing it to have been forged, in each case if the amount or value involved in the offence exceeds **[two hundred rand]** R2 500.”; and

(b) eleventh offence of the following offence:

“Any offence under any law relating to the illicit—

(a) possession of—

(i) dagga exceeding 115 grams; or

(ii) any other dependence-producing drugs; or

(b) conveyance or supply of dependence-producing drugs.”.

Amendment of Schedule 7 to Act 51 of 1977, as added by section 10 of Act 85 of 1997 and amended by section 10 of Act 34 of 1998

16. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the ninth offence of the following offence:

“Theft and any offence referred to in section 264(1)(a), (b) and (c), if the amount involved in the offence **[exceeds R200,00 but]** does not exceed R20 000,00.”.

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989, section 1 of Act 102 of 1991 and section 1 of Act 115 of 1993

17. Section 1 of the Attorneys Act, 1979, is hereby amended—

(a) by the insertion after the definition of “articles of clerkship” of the following definition:

“ ‘attend’, for purposes of Chapter I, includes participation in a distance education course approved by the provincial law societies, and ‘attended’ and ‘attending’ have a corresponding meaning;”;

(b) by the substitution for the definition of “law clinic” of the following definition:

“ ‘law clinic’ means—

(a) a centre for the practical legal education of students in the faculty of law at a university in the Republic **[, and includes]** ; or

(b) a law centre controlled by, or which is, a non-profit making organization, which, subject to section 79A, provides legal services to the public free of charge;”.

Amendment of section 28 of Act 53 of 1979

18. Section 28 of the Attorneys Act, 1979, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) **[two]** three members of each society elected annually by the council of the society.”.

Substitution of section 33 of Act 53 of 1979

19. The following section is hereby substituted for section 33 of the Attorneys Act, 1979:

“Quorum

33. [Eight] Ten members of the board of control shall constitute a quorum for any meeting thereof.”.

Insertion of section 79A in Act 53 of 1979

20. The following section is hereby inserted in the Attorneys Act, 1979, after section 79:

“Recovery of costs by law clinics

79A. (1) Notwithstanding the provisions of section 83(6) of this Act and section 9(2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), whenever in any legal proceedings or any dispute in respect of which legal services are rendered to a litigant or other person by a law clinic, costs become payable to such litigant or other person in terms of a judgment of the court or a settlement, or otherwise, it shall be deemed that such litigant or other person has ceded his or her rights to such costs to the law clinic.

(2) (a) A litigant or person referred to in subsection (1) or the law clinic rendering legal services to such litigant or person may, at any time before payment of the costs referred to in subsection (1), give notice in writing to—

(i) the person liable for such costs; and
(ii) the registrar or clerk of the court concerned,
that the legal services concerned are being or have been rendered by that law clinic.

(b) Where notice has been given as contemplated in paragraph (a), the law clinic concerned may proceed in its own name to have such costs taxed, where appropriate, and to recover them, without being substituted on the record of the legal proceedings concerned, if any, for the litigant or person referred to in subsection (1).

(3) The costs referred to in subsection (1) shall be calculated and the bill of costs concerned, if any, shall be taxed as if the litigant or person to whom legal services were rendered by the law clinic, actually incurred the costs of obtaining the services of the attorney or advocate acting on his or her behalf in the proceedings or dispute concerned.”.

Amendment of section 1 of Act 107 of 1985, as amended by section 1 of Act 77 of 1989

21. Section 1 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the deletion of the definition of “Supreme Court”.

Amendment of section 3 of Act 107 of 1985, as amended by section 2 of Act 77 of 1989

22. Section 3 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) a judge of the Supreme Court of Appeal or a High Court, whom the Minister designates as the [chairman] chairperson;
(b) a judge or retired judge of the Supreme Court of Appeal or a High Court, whom the Minister designates as the [vice-chairman] vice-chairperson;”.

Amendment of section 6 of Act 107 of 1985, as amended by section 4 of Act 77 of 1989 and section 24 of Act 139 of 1992

23. Section 6 of the Rules Board for Courts of Law Act, 1985, is hereby amended—
(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Board may, with a view to the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, the High Courts and the lower courts, from time to time on a regular basis review existing rules of court and, subject to the approval of the Minister, make, amend or repeal rules for the Supreme Court of Appeal, the High Courts and the lower courts regulating—”;

- (b) by the substitution in subsection (1) for paragraph (p) of the following paragraph:
 “(p) the custody and disposal of records or minutes of evidence and proceedings in the Supreme Court of Appeal and the High Courts;”;
- (c) by the substitution in subsection (1) for paragraph (t) of the following paragraph: 5
 “(t) generally any matter which may be necessary or useful to be prescribed for the proper despatch and conduct of the functions of the Supreme Court of Appeal, the High Courts and the lower courts in civil as well as in criminal proceedings.”; and 10
- (d) by the substitution for subsection (2) of the following subsection:
 “(2) (a) Different rules may be made in respect of the Supreme Court of Appeal, the High Courts and the lower courts and in respect of different kinds of proceedings.
 (b) The Board may, with the approval of the Minister, make different rules in respect of— 15
 (i) [different divisions of] the Supreme Court of Appeal and the High Courts;
 (ii) the different High Courts; or
 (iii) the lower courts in different magisterial districts, 20
 which shall be of force for the period or periods determined by the Board.”.

Amendment of section 8 of Act 107 of 1985, as amended by section 4 of Act 18 of 1996

24. Section 8 of the Rules Board for Courts of Law Act, 1985, is hereby amended by the substitution for subsection (1) of the following subsection: 25

“(1) A member of the Board who is a judge of the Supreme Court of Appeal or a High Court shall be entitled to such allowance for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister with the concurrence of the Minister of Finance may determine.”. 30

Substitution of long title of Act 107 of 1985

25. The following long title is hereby substituted for the long title of the Rules Board for Courts of Law Act, 1985:

“To provide for the making of rules for the efficient, expeditious and uniform administration of justice in the Supreme Court of Appeal, High Courts and lower courts; for that purpose to make provision for the establishment of the Rules Board for Courts of Law; and to provide for matters connected therewith.”. 35

Substitution of certain words in Act 107 of 1985 40

26. The Rules Board for Courts of Law Act, 1985, is hereby amended—

- (a) by the substitution for the word “chairman”, wherever it occurs in sections 4(1) and (3), 5(3) and 5A(1) and (2), of the word “chairperson”;
- (b) by the substitution for the word “vice-chairman”, wherever it occurs in sections 4(1) and (3), 5(3) and 5A(1), of the word “vice-chairperson”; 45
- (c) by the substitution for the word “he”, wherever it occurs in sections 3(1A) and 4(1), of the expression “he or she”;
- (d) by the substitution for the word “his”, wherever it occurs in sections 3(2), 5(2), 5A(4) and 8(2), of the expression “his or her”; and
- (e) by the substitution for the word “him”, wherever it occurs in sections 5(1) and (2) and 8(2), of the expression “him or her”. 50

Amendment of section 5 of Act 105 of 1991

27. Section 5 of the Game Theft Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who under the pretext of this Act wrongfully and maliciously arrests any person or causes him or her to be arrested or effects any search shall be guilty of an offence and liable on conviction to a fine **[not exceeding R4 000]** or **[in default of payment to]** imprisonment for a period not exceeding **[twelve months or to both such fine and such imprisonment]** three years.”.

Amendment of section 6 of Act 105 of 1991

28. Section 6 of the Game Theft Act, 1991, is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) where the court is not a court of a regional division, a fine **[not exceeding R8 000]** or **[in default of payment imprisonment not exceeding two years or both such fine and such imprisonment in the case of a first conviction and in the case of a second or further conviction,]** imprisonment for a period not exceeding three years; or
(b) where the court is a court of a regional division, a fine **[not exceeding R40 000]** or **[in default of payment]** imprisonment for a period not exceeding **[ten]** fifteen years **[or both such fine and such imprisonment]**.”.

Amendment of section 3 of Act 90 of 1993, as amended by section 1 of Act 35 of 1996

29. (1) Section 3 of the Magistrates Act, 1993, is hereby amended by the substitution in subsection (1)(a) for subparagraph (xi) of the following subparagraph:

“(xi) four **[senators]** permanent delegates to the National Council of Provinces and their alternates designated together by the **[Senate]** Council **[by resolution adopted by a majority]** with a supporting vote of at least **[two thirds of all its members]** six provinces; and”.

(2) Any person designated as a member of the Magistrates Commission in terms of section 3(1)(a)(xi) of the Magistrates Act, 1993 (Act No. 90 of 1993), prior to the commencement of this Act, must be regarded as having been so designated in terms of that section as amended by subsection (1).

Repeal of section 6 of Act 120 of 1993, as substituted by section 4 of Act 18 of 1996

30. Section 6 of the Magistrates' Courts Amendment Act, 1993, is hereby repealed.

Amendment of section 5 of Act 74 of 1996

31. Section 5 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the addition of the following subsection:

“(9) Any member of a Special Investigating Unit who is qualified and admitted as an advocate or an attorney, may perform such work in any court of law on behalf of a Special Investigating Unit as is by law, custom or practice performed by advocates and attorneys.”.

Amendment of section 8 of Act 74 of 1996

32. Section 8 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A Special Tribunal shall have jurisdiction to adjudicate upon any civil dispute brought before it by a Special Investigating Unit or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to—

- (a) issue suspension orders, interlocutory orders or interdicts on application by such Unit or party; **[and]**
- (b) make any order which it deems appropriate so as to give effect to any ruling or decision given or made by it; and
- (c) make any order which it deems appropriate as to costs.”.

Amendment of section 51 of Act 105 of 1997

33. Section 51 of the Criminal Law Amendment Act, 1997, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Notwithstanding any other law but subject to subsections (3) and (6), a High Court shall—
 - (a) if it has convicted a person of an offence referred to in Part I of Schedule 2; or
 - (b) if the matter has been referred to it under section 52(1) for sentence after the person concerned has been convicted of an offence referred to in Part I of Schedule 2,
 sentence the person to imprisonment for life.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court, including a High Court to which a matter has been referred under section 52(1) for sentence, shall in respect of a person who has been convicted of an offence referred to in—”;
- (c) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:
 - “**[if it has convicted a person of an offence referred to in]** Part II of Schedule 2, sentence the person, in the case of—”;
- (d) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:
 - “**[if it has convicted a person of an offence referred to in]** Part III of Schedule 2, sentence the person, in the case of—”;
- (e) by the substitution in subsection (2)(c) for the words preceding subparagraph (i) of the following words:
 - “**[if it has convicted a person of an offence referred to in]** Part IV of Schedule 2, sentence the person, in the case of—”;
- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:
 - “(b) a correctional official of the Department of Correctional Services or a person authorised under the Correctional Services Act, **[1959 (Act No. 8 of 1959)]** 1998 (Act No. 111 of 1998).”.

Amendment of section 52 of Act 105 of 1997

34. Section 52 of the Criminal Law Amendment Act, 1997, is hereby amended—

- (a) by the substitution for the heading of the following heading:
 - “**Committal of accused for sentence by High Court after [plea of guilty or trial] conviction in regional court of offence referred to in Schedule 2**”;
- (b) by the substitution for subsection (1) of the following subsection:
 - “(1) If a regional court, **[after it has convicted an accused of an offence referred to in Schedule 2]** following on—
 - (a) a plea of guilty; or
 - (b) a plea of not guilty,
 has convicted an accused of an offence referred to in—
 - (i) Part I of Schedule 2; or
 - (ii) Part II, III or IV of Schedule 2 and the court **[but before sentence,** is of the opinion that the offence **[in respect of which the accused has been convicted]** concerned merits punishment in excess of the jurisdiction of a regional court in terms of section 51(2), the court shall stop the proceedings and commit the accused for sentence as contemplated in section 51(1) or (2), as the case may be, by a High Court having jurisdiction.”;

- (c) by the substitution in subsection (2)(b) for the words following upon subparagraph (ii) of the following words:
 “the Court shall make a formal finding of guilty and sentence the accused as contemplated in section 51(1) or (2), as the case may be.”;
- (d) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 5
 “(c) If the Court—
 (i) is satisfied that a plea of guilty or any admission by the accused which is material to his or her guilt was incorrectly recorded; or
 (ii) **[if the Court]** is not satisfied that the accused is guilty of the offence 10
 of which he or she has been convicted and in respect of which he or she has been committed for sentence or that he or she has no valid defence to the charge,
 the Court shall enter a plea of not guilty and proceed with the trial as a summary trial in that Court: Provided that any admission by the accused 15
 the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.”;
- (e) by the substitution in subsection (3)(b) for the words preceding the proviso of the following words:
 “The High Court shall, after considering the record of the proceedings in 20
 the regional court, sentence the accused as contemplated in section 51(1) or (2), as the case may be, and the judgment of the regional court shall stand for this purpose and be sufficient for the High Court to pass such sentence [as contemplated in section 51]:”; and
- (f) by the substitution in subsection (3)(e) for subparagraphs (i) and (ii) of the 25
 following subparagraphs, respectively:
 “(i) confirm the conviction and thereupon impose a sentence as contemplated in section 51(1) or (2), as the case may be;
 (ii) alter the conviction to a conviction of another offence referred to in Schedule 2 and thereupon impose a sentence as contemplated in 30
 section 51(1) or (2), as the case may be.”.

Insertion of sections 52A and 52B in Act 105 of 1997

35. The following sections are hereby inserted in the Criminal Law Amendment Act, 1997, after section 52:

“Committal of accused for sentence by High Court after conviction in regional court of offence not referred to in Schedule 2 35

52A. (1) If a regional court, following on—

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|--|---|
| <p>(a) a plea of guilty; or
 (b) a plea of not guilty,
 has convicted an accused of an offence referred to in Schedule 2 as well as an offence not referred to in that Schedule, the court shall—</p> <p>(i) where it stops the proceedings as contemplated in section 52(1) for purposes of committing the accused for sentence by a High Court, simultaneously stop the proceedings in respect of the offence not referred to in that Schedule; and</p> <p>(ii) when it commits the accused for sentence under section 52(1) by a High Court, simultaneously commit the accused for sentence by the High Court in question in respect of the offence not referred to in that Schedule in accordance with subsection (2) or (3).</p> <p>(2) (a) Where an accused is committed under subsection (1)(a) for sentence by a High Court, the record of the proceedings in the regional court shall upon proof thereof in the High Court be received by the High Court and form part of the record of that Court, and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the Court that such plea or such admission was incorrectly recorded.</p> | <p>40</p> <p>45</p> <p>50</p> <p>55</p> |
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- (b) Unless the High Court in question—
- (i) is satisfied that a plea of guilty or an admission by the accused which is material to his or her guilt was incorrectly recorded; or
 - (ii) is not satisfied that the accused is guilty of the offence of which he or she has been convicted and in respect of which he or she has been committed for sentence,
- the Court shall make a formal finding of guilty and thereupon impose the sentence that the Court may deem fit.
- (c) If the Court—
- (i) is satisfied that a plea of guilty or any admission by the accused which is material to his or her guilt was incorrectly recorded; or
 - (ii) is not satisfied that the accused is guilty of the offence of which he or she has been convicted and in respect of which he or she has been committed for sentence or that he or she has no valid defence to the charge,
- the Court shall enter a plea of not guilty and proceed with the trial as a summary trial in that Court: Provided that any admission by the accused the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.
- (d) The provisions of section 112(3) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply with reference to the proceedings under this subsection.
- (3) (a) Where an accused is committed under subsection (1)(b) for sentence by a High Court, the record of the proceedings in the regional court shall upon proof thereof in the High Court be received by the High Court and form part of the record of that Court.
- (b) The High Court shall, after considering the record of the proceedings in the regional court, impose the sentence that the Court may deem fit, and the judgment of the regional court shall stand for this purpose and be sufficient for the High Court to pass such sentence: Provided that if the judge is of the opinion that the proceedings are not in accordance with justice or that doubt exists whether the proceedings are in accordance with justice, he or she shall, without sentencing the accused, obtain from the regional magistrate who presided at the trial a statement setting forth his or her reasons for convicting the accused.
- (c) If a judge acts under the proviso to paragraph (b), he or she shall inform the accused accordingly and subject to section 52(3)(c) postpone the case for judgment.
- (d) The Court in question may at any sitting thereof hear any evidence and for that purpose summon any person to appear to give evidence or to produce any document or other article.
- (e) Such Court, whether or not it has heard evidence and after it has obtained and considered a statement referred to in paragraph (b), may—
- (i) confirm, alter or quash the conviction, and in the event of the conviction being quashed where the accused was convicted on one of two or more alternative charges, convict the accused on the other alternative charge or on one or other of the alternative charges and thereupon impose the sentence that the Court may deem fit;
 - (ii) set aside the conviction;
 - (iii) remit the case to the regional court with instruction to deal with any matter in such manner as the High Court may deem fit; or
 - (iv) make any such order in regard to any matter or thing connected with such person or the proceedings in regard to such person as the High Court deems likely to promote the ends of justice.

Simultaneous imposition of sentence by High Court for offence referred to in Schedule 2 and offence not referred to in that Schedule

52B. If a regional court has committed an accused under sections 52(1) and 52A(1) for sentence by a High Court, the High Court in question shall, when sentencing the accused as contemplated in section 51(1) or (2) in respect of the matter referred to it under section 52(1), simultaneously sentence the accused as contemplated in section 52A(2) or (3) in respect of the matter referred to it under section 52A(1).”.

Substitution of section 53 of Act 105 of 1997

36. The following section is hereby substituted for section 53 of the Criminal Law Amendment Act, 1997:

“Saving

53. (1) Sections 51, [and] 52, 52A and 52B shall, subject to subsections (2) and (3), cease to have effect after the expiry of two years from the commencement of this Act.

(2) The period referred to in subsection (1) may be extended by the President, with the concurrence of Parliament, by proclamation in the *Gazette* for [one year] two years at a time.

(3) Any appeal against—

(a) a conviction of an offence—

(i) referred to in Schedule 2 of this Act and a resultant sentence imposed in terms of section 51; or

(ii) not referred to in the said Schedule 2 and a resultant sentence imposed in terms of section 52A; or

(b) a sentence imposed in terms of section 51 or 52A, as the case may be, shall be continued and concluded as if [section] sections 51 and 52A had at all relevant times been in operation.

(4) Sections 51 and 52 shall not derogate from the provisions of section 89(2) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).

(5) If a regional court has convicted an accused of an offence referred to in Schedule 2 as well as an offence not referred to in that Schedule, and the court has, prior to the commencement of the Judicial Matters Amendment Act, 2000, committed the accused under section 52(1) for sentence by a High Court in respect of the offence referred to in the said Schedule 2, but has not committed the accused for sentence by the High Court in question in respect of the offence not referred to in that Schedule, the regional court must sentence the accused in respect of the last-mentioned offence as if the Judicial Matters Amendment Act, 2000, had not been passed.”.

Amendment of Schedule 2 to Act 105 of 1997

37. Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the substitution in Part I for subparagraph (ii) of paragraph (c) of the first offence of the following subparagraph:

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

Short title and commencement

38. This Act is called the Judicial Matters Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL, 2000

1. PURPOSE OF BILL

The main object of the Bill is to encompass in a single Bill a variety of amendments to laws which are administered by the Department of Justice and Constitutional Development and which amendments do not require individual Amendment Bills. These mainly comprise the rectification of certain provisions and are also aimed at supplementing certain lacunae which have arisen in practice. The Bill also contains certain amendments which are of a more substantial nature.

2. OBJECTS OF BILL

The objects of the respective clauses of the Bill are briefly explained below.

2.1 **Clause 1** amends section 9(2)(a) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), so as to provide that all magistrates, whether in a permanent, acting or temporary capacity, must take the prescribed oath or make the prescribed affirmation before such a person may preside over a court. It further amends the said section in order to bring the wording of the oath prescribed therein into line with that of the oath prescribed for judges in terms of item 6(1) of Schedule 2 to the Constitution.

2.2 In **Samuel Manamela and Another v the State** (Case No. CCT 25/99), the Constitutional Court declared the reverse onus provision in section 37(1) of the General Law Amendment Act, 1955 (Act No. 62 of 1955), to be inconsistent with the Constitution and invalid. **Clause 2** amends the said section 37(1) so as to bring the provisions thereof into line with the Constitutional Court's order.

2.3 **Clauses 3 and 4** amend the Stock Theft Act, 1959 (Act No. 57 of 1959), whilst the Game Theft Act, 1991 (Act No. 105 of 1991), is amended by **clauses 27 and 28**, so as to bring the penalty clauses contained therein into line with the present general penal jurisdiction of magistrates' courts, namely three years' imprisonment, in the case of district courts, and fifteen years' imprisonment, in the case of regional courts.

2.4 Section 72(1)(a)(ii) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), is amended by **clause 6** in order to substitute the archaic and stigmatizing expression "illegitimate minor" with the expression "minor born out of wedlock".

2.5.1 **Clause 8(1)** amends, among others, section 50(6)(c) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), so as to provide that the bail application of a person who is charged with an offence referred to in Schedule 6 of the said Act, must be considered by a magistrate's court. Provision is, however, made that the Director of Public Prosecutions concerned, or a prosecutor authorised thereto in writing by him or her, may in a particular case direct in writing that the application must be considered by a regional court.

2.5.2 In the light of the Constitutional Court's judgment in **S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat** 1999 (2) SACR 51 (CC), **clause 9** amends section 60(1)(a) and (4) of the Criminal Procedure Act, 1977 [(**Act No. 51 of 1977**)], in order to bring the provisions thereof into line with the Constitution.

2.5.3 In the light of our present constitutional dispensation, the view is held that the "special superior court" envisaged by section 148 of the Criminal Procedure Act, 1977, is superfluous and **clause 10** makes provision for the repeal thereof. Emanating from the repeal of section 148, **clauses 5, 7 and 11 to 14** effect consequential amendments to section 12 of the Supreme Court Act, 1959 (Act No. 59 of 1959), and sections 1, 315, 316, 317 and 319 of the Criminal Procedure Act, 1977.

2.5.4 **Clauses 15 and 16** amend Schedules 2 and 7 to the Criminal Procedure Act, 1977, respectively, by extending the power of certain police officials to release accused persons, who are in custody in respect of certain offences, on bail before their first appearance in a lower court.

2.6.1 Section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979), is amended by **clause 17** which, among others, provides for the insertion of a definition of "attend" in order to make it clear that "attend" includes "participation in a distance education course".

2.6.2 **Clause 18** amends section 28(1)(b) of the Attorneys Act, 1979, so as to increase the number of members of the respective provincial law societies on the Attorneys Fidelity Fund Board of Control. Section 33 of the Attorneys Act, 1979, which provides for the quorum of the above Board of Control, is substituted by **clause 19** so as to bring the provisions thereof into line with the proposed new number of members of the said Board. **Clause 20** inserts a new section 79A into the Attorneys Act, 1979, which provides that law clinics may recover certain costs.

2.7 **Clause 23** amends, among others, section 6(2) of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), in order to empower the Rules Board for Courts of Law to make different rules in respect of the Supreme Court of Appeal and the High Courts, the different High Courts, or the lower courts in different magisterial districts. **Clauses 21, 22, 24 and 25** amend certain sections and the long title of this Act by bringing them into line with the Constitution, while **clause 26** effects technical changes to that Act.

2.8 **Clause 29** amends section 3(1)(a)(xi) of the Magistrates Act, 1993 (Act No. 90 of 1993), in order to bring the designation procedure in respect of delegates to the National Council of Provinces as members of the Magistrates Commission into line with the designating procedure prescribed in section 178(1)(i) of the Constitution.

2.9 **Clause 30** amends the Magistrates' Courts Amendment Act, 1993 (Act No. 120 of 1993), by repealing an obsolete provision.

2.10 **Clause 31** amends section 5 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), by providing that any member of a Special Investigating Unit who is qualified and admitted as an advocate or an attorney, may perform any work in any court of law on behalf of a Special Investigating Unit which can be performed by an advocate and by an attorney. **Clause 32** amends section 8 of this Act by granting a Special Tribunal the power to make orders as to costs.

2.11 Various High Courts have delivered dissenting judgments in respect of the interpretation of sections 51 and 52 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997). These provisions regulate the imposition of minimum sentences by High Courts and regional courts in respect of certain serious offences, as well as the committal of an accused for sentence by a High Court after such an accused has been convicted in a regional court of an offence referred to in Schedule 2 to the said Act. **Clauses 33 and 34** amend sections 51 and 52 by expressly setting out the respective powers and roles of the High Courts and regional courts in these matters. **Clause 35** inserts a new section 52A and a new section 52B in the Criminal Law Amendment Act, 1997. Section 52A provides that if a regional court has convicted an accused of an offence referred to in Schedule 2 to the Act, as well as an offence not referred to in that Schedule, the court must, if it stops the proceedings in respect of the offence referred to in Schedule 2 and commits the accused for sentence by a High Court in respect of that offence, simultaneously stop the proceedings in respect of the offence not referred to in Schedule 2 and also commit the accused for sentence by the High Court in question in respect of that offence. Section 52B provides that if an accused has been committed to a High Court for sentence in respect of an offence referred to in Schedule 2 as well as an offence not referred to in that Schedule, the High Court in question must sentence the accused in respect of both offences. **Clause 36** substitutes section 53 of the Criminal Law Amendment Act, 1997, in order to expressly provide, among others, that a regional court retains its jurisdiction to try the offences of murder and rape referred to in Part I of Schedule 2 to the said Act. **Clause 37** amends Schedule 2 to the Criminal Law Amendment Act, 1997, so as to ensure that the expression "aggravating circumstances" carries the same meaning as contemplated in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- * The Magistrates Commission has been consulted in respect of **clause 1**.
- * The Office of the National Director of Public Prosecutions has been consulted in respect of **clause 8**.
- * The Office of the National Director of Public Prosecutions and the South African Police Service have been consulted in respect of **clauses 15 and 16**.

- * The Law Society of South Africa has been consulted in respect of **clauses 17(a), 18 and 19.**
- * The Legal Resources Centre, the General Council of the Bar and the Law Society of South Africa have been consulted in respect of **clauses 17(b) and 20.**

The view is held that, due to the nature of the amendments in the remaining clauses, no extensive consultation is required in respect thereof.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

The amendments proposed in **clause 15** will result in financial savings for the Department of Justice and Constitutional Development.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.