

# **CRIMINAL PROCEDURE ACT**

## **NO. 51 OF 1977**

[ASSENTED TO 21 APRIL, 1977]

[DATE OF COMMENCEMENT: 22 JULY, 1977]

(Afrikaans text signed by the State President)

As amended by

Criminal Procedure Matters Amendment Act, No. 79 of 1978

Criminal Procedure Amendment Act, No. 56 of 1979

Criminal Procedure Amendment Act, No. 64 of 1982

Appeals Amendment Act, No. 105 of 1982

[With effect from 1 April 1983]

Criminal Law Amendment Act, No. 59 of 1983

Criminal Procedure Matters Amendment Act, No. 109 of 1984

Immorality and Prohibition of Mixed Marriages Amendment Act, No. 72 of 1985

Criminal Procedure Amendment Act, No. 33 of 1986

Special Courts for Blacks Abolition Act, No. 34 of 1986

[With effect from 1 August 1986]

Transfer of Powers and Duties of the State President Act, No. 97 of 1986

[With effect from 3 October 1986]

Criminal Procedure Amendment Act, No. 26 of 1987

Law of Evidence and the Criminal Procedure Amendment Act, No. 103 of 1987

Law of Evidence Act, No. 45 of 1988

[With effect from 3 October, 1988]

Criminal Procedure Amendment Act, No. 8 of 1989

Criminal Law and the Criminal Procedure Amendment Act, No. 39 of 1989

Judicial Matters Amendment Act, No. 77 of 1989

[with effect from 31 July, 1989]

Criminal Law Amendment Act, No. 107 of 1990

Criminal Procedure Amendment Act, No. 5 of 1991

Transfer of Powers and Duties of the State President Act, No. 51 of 1991

[with effect from 29 April, 1991]

Correctional Services and Supervision Matters Amendment Act, No. 122 of 1991

[with effect from 15 August, 1991]

Criminal Law Amendment Act, No. 135 of 1991

Criminal Law Amendment Act, No. 4 of 1992

Prevention and Treatment of Drug Dependency Act, No. 20 of 1992

[with effect from 30 April, 1993]

Attorney-General Act, Act No. 92 of 1992 [With effect from 31 December, 1992]

Criminal Law Second Amendment Act, No. 126 of 1992

General Law Amendment Act, No. 139 of 1992

[with effect from 7 August, 1992]

Criminal Matters Amendment Act, No. 116 of 1993

General Law Third Amendment Act, No. 129 of 1993

[with effect from 1 September, 1993]

General Law Fifth Amendment Act, No. 157 of 1993

[with effect from 1 December, 1993]

General Law Sixth Amendment Act, No. 204 of 1993

[with effect from 1 March, 1994]

Criminal Procedure Second Amendment Act, No. 75 of 1995  
 Justice Laws Rationalisation Act, No. 18 of 1996  
 [with effect from 1 April, 1997]  
 General Law Amendment Act, No. 49 of 1996  
 [with effect from 4 October, 1996]  
 International Co-operation in Criminal Matters Act, No. 75 of 1996  
 [with effect from 1 January, 1998]  
 Criminal Procedure Second Amendment Act, No. 85 of 1996  
 Criminal Procedure Amendment Act, No. 86 of 1996  
 Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996  
 [with effect from 22 November, 1996]  
 Abolition of Corporal Punishment Act, No. 33 of 1997  
 Criminal Procedure Amendment Act, No. 76 of 1997  
 Criminal Procedure Second Amendment Act, No. 85 of 1997  
 Criminal Law Amendment Act, No. 105 of 1997  
 National Prosecuting Authority Act, No. 32 of 1998  
 [with effect from 16 October, 1998]  
 Judicial Matters Amendment Act, No. 34 of 1998  
 [with effect from 1 August, 1998 and 15 January, 1999]  
 Criminal Matters Amendment Act, No. 68 of 1998  
 Maintenance Act, No. 99 of 1998  
 [with effect from 26 November, 1999]  
 Witness Protection Act, No. 112 of 1998  
 [with effect from 31 March, 2000]  
 Domestic Violence Act, No. 116 of 1998  
 Judicial Matters Second Amendment Act, No. 122 of 1998  
 [with effect from 18 July, 2003, unless otherwise indicated]  
 Judicial Matters Amendment Act, No. 62 of 2000  
 [with effect from 23 March, 2000]  
 Criminal Procedure Amendment Act, No. 17 of 2001  
 Judicial Matters Amendment Act, No. 42 of 2001  
 [with effect from 7 December, 2001, unless otherwise indicated]  
 Criminal Procedure Second Amendment Act, No. 62 of 2001  
 Implementation of the Rome Statute of the International Criminal Court Act, No. 27  
 of 2002  
 Criminal Procedure Amendment Act, No. 42 of  
 2003

## ACT

### **To make provision for procedures and related matters in criminal proceedings**

#### **19. Saving as to certain powers conferred by other laws.**

The provisions of this Chapter shall not derogate from any power conferred by any other law to enter any premises or to search any person, container or premises or to seize any matter, to declare any matter forfeited or to dispose of any matter.

#### **20. State may seize certain articles.**

The State may, in accordance with the provisions of this Chapter, seize anything (in this Chapter referred to as an article)

- (a) Which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence whether within the Republic or elsewhere;
- (b) Which may afford evidence of the commission or suspected commission of an offence whether within the Republic or elsewhere; or
- (c) Which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.

**40. Arrest by peace officer without warrant.**

- (1) A peace officer may without warrant arrest any person-
  - (a) Who commits or attempts to commit any offence in his presence;
  - (b) Whom he reasonably suspects of having committed an offence referred to in Schedule 1, other than the offence of escaping from lawful custody;
  - (c) Who has escaped or who attempts to escape from lawful custody;
  - (d) Who has in his possession any implement of housebreaking or carbreaking as contemplated in section 82 of the General Law Third Amendment Act, 1993, and who is unable to account for such possession to the satisfaction of the peace officer;
  - (e) Who is found in possession of anything which the peace officer reasonably suspects to be stolen property or property dishonestly obtained, and whom the peace officer reasonably suspects of having committed an offence with respect to such thing;
  - (f) Who is found at any place by night in circumstances which afford reasonable grounds for believing that such person has committed or is about to commit an offence;
  - (g) Who is reasonably suspected of being or having been in unlawful possession of stock or produce as defined in any law relating to the theft of stock or produce;
  - (h) Who is reasonably suspected of committing or of having committed an offence under any law governing the making, supply, possession or conveyance of intoxicating liquor or of dependence-producing drugs or the possession or disposal of arms or ammunition;
  - (i) Who is found in any gambling house or at any gambling table in contravention of any law relating to the prevention or suppression of gambling or games of chance;
  - (j) Who wilfully obstructs him in the execution of his duty;
  - (k) Who has been concerned in or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has been concerned in any act committed outside the Republic which, if committed in the Republic, would have been punishable as an offence, and for which he is, under any law relating to extradition or fugitive offenders, liable to be arrested or detained in custody in the Republic;

- (l) Who is reasonably suspected of being a prohibited immigrant in the Republic in contravention of any law regulating entry into or residence in the Republic;
- (m) Who is reasonably suspected of being a deserter from the South African National Defence Force;
- (n) Who is reasonably suspected of having failed to observe any condition imposed in postponing the passing of sentence or in suspending the operation of any sentence under this Act;
- (o) Who is reasonably suspected of having failed to pay any fine or part thereof on the date fixed by order of court under this Act;
- (p) Who fails to surrender himself in order that he may undergo periodical imprisonment when and where he is required to do so under an order of court or any law relating to prisons;
- (q) Who is reasonably suspected of having committed an act of domestic violence as contemplated in section (1) of the Domestic Violence Act, 1998, which constitutes an offence in respect of which violence is an element.

(2) If a person may be arrested under any law without warrant and subject to conditions or the existence of circumstances set out in that law, any peace officer may without warrant arrest such person subject to such conditions or circumstances.

**41. Name and address of certain persons and power of arrest by peace officer without warrant. -**

- (1) A peace officer may call upon any person-
  - (a) Whom he has power to arrest;
  - (b) Who is reasonably suspected of having committed or of having attempted to commit an offence;
  - (c) Who, in the opinion of the peace officer, may be able to give evidence in regard to the commission or suspected commission of any offence, to furnish such peace officer with his full name and address, and if such person fails to furnish his full name and address, the peace officer may forthwith and without warrant arrest him, or, if such person furnishes to the peace officer a name or address which the peace officer reasonably suspects to be false, the peace officer may arrest him without warrant and detain him for a period not exceeding twelve hours until such name or address has been verified.
- (2) Any person who, when called upon under the provisions of subsection (1) to furnish his name and address, fails to do so or furnishes a false or incorrect name and address, shall be guilty of an offence and liable on conviction to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

**54. Summons as method of securing attendance of accused in magistrate's court.**

- (1) Where the prosecution intends prosecuting an accused in respect of any offence and the accused is not in custody in respect of that offence and no warrant has been or is to be issued for the arrest of the accused for that offence, the prosecutor may secure the attendance of the accused for a summary trial in a lower court having jurisdiction by drawing up the relevant charge and handing such charge, together with information relating to the name and, where known and where applicable, the residential address and occupation or status of the accused, to the clerk of the court who shall-
  - (a) Issue a summons containing the charge and the information handed to him by the prosecutor, and specifying the place, date and time for the appearance of the accused in court on such charge; and
  - (b) Deliver such summons, together with so many copies thereof as there are accused to be summoned, to a person empowered to serve a summons in criminal proceedings.
- (2)
  - (a) Except where otherwise expressly provided by any law, the summons shall be served by a person referred to in subsection (1) (b) by delivering it to the person named therein or, if he cannot be found, by delivering it at his residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there.
  - (b) A return by the person who served the summons that the service thereof has been effected in terms of paragraph (a), may, upon the failure of the person concerned to attend the relevant proceedings, be handed in at such proceedings and shall be prima facie proof of such service.
- (3) A summons under this section shall be served on an accused so that he is in possession thereof at least fourteen days (Sundays and public holidays excluded) before the date appointed for the trial.

**55. Failure of accused to appear on summons.**

- (1) An accused who is summoned under section 54 to appear at criminal proceedings and who fails to appear at the place and on the date and at the time specified in the summons or who fails to remain in attendance at such proceedings, shall be guilty of an offence and liable to the punishment prescribed under subsection (2).
- (2) The court may, if satisfied from the return of service referred to in paragraph (b) of section 54 (2) that the summons was served on the accused in terms of paragraph (a) of that section and that the accused has failed to appear at the place and on the date and at the time specified in the summons, or if satisfied that the accused has failed to remain in attendance at the proceedings in question, issue a warrant for his arrest and, when he is brought before the court, in a summary manner enquire into his failure so to appear or so to remain in attendance and unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not

exceeding R300 or to imprisonment for a period not exceeding three months: Provided that where a warrant is issued for the arrest of an accused who has failed to appear in answer to the summons, the person executing the warrant-

- (a) May, where it appears to him that the accused received the summons in question and that the accused will appear in court in accordance with a warning under section 72; or
  - (b) Shall, where it appears to him that the accused did not receive the summons in question or that the accused has paid an admission of guilt fine in terms of section 57 or that there are other grounds on which it appears that the failure of the accused to appear on the summons was not due to any fault on the part of the accused, for which purpose he may require the accused to furnish an affidavit or affirmation, release the accused on warning under section 72 in respect of the offence of failing to appear in answer to the summons, whereupon the provisions of that section shall mutatis mutandis apply with reference to the said offence.
- (2A)
- (a) If the court issues a warrant of arrest in terms of subsection (2) in respect of a summons which is endorsed in accordance with section 57 (1) (a)-
    - (i) An endorsement to the same effect shall be made on the warrant in question;
    - (ii) The court may make a further endorsement on the warrant to the effect that the accused may admit his guilt in respect of the failure to appear in answer to the summons or to remain in attendance at the criminal proceedings, and that he may upon arrest pay to a clerk of the court or at a police station a fine stipulated on the warrant in respect of such failure, which fine shall not exceed the amount to be imposed in terms of subsection (2), without appearing in court.
  - (b) The fine paid in terms of paragraph (a) at a police station or to a clerk of a magistrate's court other than the magistrate's court which issued the warrant of arrest, shall, as soon as is expedient, together with the warrant of arrest in question, be forwarded to the clerk of the court which issued that warrant, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such admission of guilt in the criminal record book for admission of guilt, whereupon the accused concerned shall be deemed to have been convicted by the court in respect of the offence in question.
- (3)
- (a) If, in any case in which a warrant of arrest is issued, it was permissible for the accused in terms of section 57 to admit his guilt in respect of the summons on which he failed to appear and to pay a fine in respect thereof without appearing in court, and the accused is arrested under such warrant in the area of jurisdiction of a magistrate's court other than the magistrate's court which issued the warrant of arrest, such other magistrate's court may, notwithstanding any provision of this Act or any other law to the

contrary, and if satisfied that the accused has, since the date on which he failed to appear on the summons in question, admitted his guilt in respect of that summons and has paid a fine in respect thereof without appearing in court, in a summary manner enquire into his failure to appear on such summons and, unless the accused satisfies the court that his failure was not due to any fault on his part, convict him of the offence referred to in subsection (1) and sentence him to a fine not exceeding R300 or to imprisonment for a period not exceeding three months.

- (b) In proceedings under paragraph (a) before such other magistrate's court, it shall be presumed, upon production in such court of the relevant warrant of arrest, that the accused failed to appear on the summons in question, unless the contrary is proved.

**56. Written notice as method of securing attendance of accused in magistrate's court.**

- (1) If an accused is alleged to have committed an offence and a peace officer on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, such peace officer may, whether or not the accused is in custody, hand to the accused a written notice which shall—
  - (a) Specify the name, the residential address and the occupation or status of the accused;
  - (b) Call upon the accused to appear at a place and on a date and at a time specified in the written notice to answer a charge of having committed the offence in question;
  - (c) Contain an endorsement in terms of section 57 that the accused may admit his guilt in respect of the offence in question and that he may pay a stipulated fine in respect thereof without appearing in court; and
  - (d) Contain a certificate under the hand of the peace officer that he has handed the original of such written notice to the accused and that he has explained to the accused the import thereof.
- (2) If the accused is in custody, the effect of a written notice handed to him under subsection (1) shall be that he be released forthwith from custody.
- (3) The peace officer shall forthwith forward a duplicate original of the written notice to the clerk of the court which has jurisdiction.
- (4) The mere production to the court of the duplicate original referred to in subsection (2) shall be prima facie proof of the issue of the original thereof to the accused and that such original was handed to the accused.
- (4) The provisions of section 55 shall mutatis mutandis apply with reference to a written notice handed to an accused under subsection (1).

**57. Admission of guilt and payment of fine without appearance in court.**

- (1) Where-
- (a) A summons is issued against an accused under section 54 (in this section referred to as the summons) and the public prosecutor or the clerk of the court concerned on reasonable grounds believes that a magistrate's court, on convicting the accused of the offence in question, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, and such public prosecutor or clerk of the court endorses the summons to the effect that the accused may admit his guilt in respect of the offence in question and that he may pay a fine stipulated on the summons in respect of such offence without appearing in court; or
  - (b) A written notice under section 56 (in this section referred to as the written notice) is handed to the accused and the endorsement in terms of paragraph (c) of subsection (1) of that section purports to have been made by a peace officer, the accused may, without appearing in court, admit his guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the magistrate's court which has jurisdiction or at any police station within the area of jurisdiction of that court or, if the summons or written notice in question is endorsed to the effect that the fine may be paid at a specified local authority, at such local authority.
- (2)
- (a) The summons or the written notice may stipulate that the admission of guilt fine shall be paid before a date specified in the summons or written notice, as the case may be.
  - (b) An admission of guilt fine may be accepted by the clerk of the court concerned notwithstanding that the date referred to in paragraph (a) or the date on which the accused should have appeared in court has expired.
- (3)
- (a)
    - (i) Subject to the provisions of subparagraphs (ii) and (iii), an accused who intends to pay an admission of guilt fine in terms of subsection (1), shall surrender the summons or the written notice, as the case may be, at the time of the payment of the fine.
    - (ii) If the summons or written notice, as the case may be, is lost or is not available and the copy thereof known as the control document-
      - (aa) is not available at the place of payment referred to in subsection (1), the accused shall surrender a copy of the summons or written notice, as the case may be, at the time of the payment of the fine; or
      - (bb) is available at the place of payment referred to in subsection (1), the admission of guilt fine may be accepted without the surrender of a copy of the summons or written notice, as the case may be.
    - (iii) If an accused in respect of whom a warrant has been endorsed in terms of section 55 (2A) intends to pay the relevant admission of guilt fine, the clerk of the court may, after he has satisfied himself that the warrant is so endorsed, accept the admission of

guilt fine without the surrender of the summons, written notice or copy thereof, as the case may be.

- (b) A copy referred to in paragraph (a) (ii) may be obtained by the accused at the magistrate's court, police station or local authority where the copy of the summons or written notice in question known as the control document is filed.
  - (c) Notwithstanding the provisions of subsection (1), an accused referred to in paragraph (a) (iii) may pay the admission of guilt fine in question to the clerk of the court where he appears in consequence of such warrant, and if the said clerk of the court is not the clerk of the magistrate's court referred to in subsection (1), he shall transfer such admission of guilt fine to the latter clerk of the magistrate's court.
- (4) No provision of this section shall be construed as preventing a public prosecutor attached to the court concerned from reducing an admission of guilt fine on good cause shown.
- (5) (a) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with a determination which the magistrate of the district or area in question may from time to time make in respect of any offence or, if the magistrate has not made such a determination, in accordance with an amount determined in respect of any particular summons or any particular written notice by either a public prosecutor attached to the court of such magistrate or a police official of or above the rank of non-commissioned officer attached to a police station within the magisterial district or area in question or, in the absence of such a police official at any such police station, by the senior police official then in charge at such police station.
- (b) An admission of guilt fine determined under paragraph (a) shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount determined by the Minister from time to time by notice in the Gazette, whichever is the lesser.
- (6) An admission of guilt fine paid at a police station or a local authority in terms of subsection (1) and the summons or, as the case may be, the written notice surrendered under subsection (3), shall, as soon as is expedient, be forwarded to the clerk of the magistrate's court which has jurisdiction, and such clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of such summons or, as the case may be, such written notice and of any summons or written notice surrendered to the clerk of the court under subsection (3), in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection (7), be deemed to have been convicted and sentenced by the court in respect of the offence in question.
- (7) The judicial officer presiding at the court in question shall examine the documents and if it appears to him that a conviction or sentence under subsection (6) is not in accordance with justice or that any such sentence, except as provided in subsection (4), is not in accordance with a determination made by the magistrate under subsection (5) or, where the

determination under that subsection has not been made by the magistrate, that the sentence is not adequate, such judicial officer may set aside the conviction and sentence and direct that the accused be prosecuted in the ordinary course, whereupon the accused may be summoned to answer such charge as the public prosecutor may deem fit to prefer: Provided that where the admission of guilt fine which has been paid exceeds the amount determined by the magistrate under subsection (5), the said judicial officer may, in lieu of setting aside the conviction and sentence in question, direct that the amount by which the said admission of guilt fine exceeds the said determination be refunded to the accused concerned.

**57A. Admission of guilt and payment of fine after appearing in court. -**

- (1) If an accused who is alleged to have committed an offence has appeared in court and is-
  - (a) In custody awaiting trial on that charge and not on another more serious charge;
  - (b) Released on bail under section 59 or 60; or
  - (c) Released on warning under section 72,the public prosecutor may, before the accused has entered a plea and if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, hand to the accused a written notice, or cause such notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a stipulated fine in respect thereof without appearing in court again.
- (2) Such notice shall contain-
  - (a) The case number;
  - (b) A certificate under the hand of the prosecutor or peace officer affirming that he or she handed or delivered, as the case may be, the original of such notice to the accused and that he or she explained to the accused the import thereof; and
  - (c) The particulars and instructions contemplated in paragraphs (a) and (b) of section 56 (1).
- (3) The public prosecutor shall endorse the charge sheet to the effect that a notice contemplated in this section has been issued and he or she or the peace officer, as the case may be, shall forthwith forward a duplicate original of the notice to the clerk of the court which has jurisdiction.
- (4) The provisions of sections 55, 56 (2) and (4) and 57 (2) to (7), inclusive, shall apply mutatis mutandis to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, such notice were the written notice contemplated in that section and as if the fine stipulated in such written notice were also the admission of guilt fine contemplated in that section.

