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STAATSKOERANT

GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 770.

11 Maart 1992

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

No. 4 van 1992: Strafwetwysigingswet, 1992.

No. 770.

11 March 1992

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

No. 4 of 1992: Criminal Law Amendment Act, 1992.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Strafproseswet, 1955, ten einde voorsiening te maak vir 'n verhoging van die bedrag wat deur 'n landdros vasgestel kan word ten opsigte van 'n borgakte as sekerheid om die vrede te bewaar; tot wysiging van die Wet op Seksuele Misdrywe, 1957, ten einde voorsiening te maak dat 'n boete by skuldigbevinding aan sekere misdrywe opgelê kan word; tot wysiging van die Strafproseswet, 1977, ten einde voorsiening te maak dat 'n skulderkenningsboete betaal kan word ten opsigte van 'n versuim om in sekere gevalle in die hof te verskyn of by strafregtelike verrigtinge aanwesig te bly; 'n hof te magtig om onder sekere omstandighede die tydperk van ondersoek na die geestestoestand van 'n beskuldigde in sy afwesigheid te verleng; voorsiening te maak dat opsetlike saakbeskadiging 'n bevoegde uitspraak uitmaak op 'n aanklag van huisbraak met die opset om 'n aan die aanklaer onbekende misdryf, of poging tot huisbraak, te pleeg; sekere ernstige gemeenregtelike misdrywe uit te sluit van misdrywe ten opsigte waarvan 'n skuldigbevinding verval as vorige veroordeling na verloop van 10 jaar; en voorsiening te maak dat 'n landdros of sekere polisiebeamptes in sekere omstandighede kan toestem tot 'n mediese ondersoek van 'n minderjarige; tot wysiging van die Wet op Binnelandse Veiligheid, 1982, ten einde 'n tegniese regstelling aan te bring; en om vir bykomstige aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 3 Maart 1992.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 384 van Wet 56 van 1955

1. Artikel 384 van die Strafproseswet, 1955, word hierby gewysig—
 - (a) deur in subartikel (1) die uitdrukking “vyf-en-twintig pond” deur die uitdrukking “R2 000” te vervang; en 5
 - (b) deur in subartikel (3) die uitdrukking “een maand” deur die uitdrukking “ses maande” te vervang.

Wysiging van artikel 22 van Wet 23 van 1957, soos vervang deur artikel 4 van Wet 68 van 1967 en gewysig deur artikel 4 van Wet 57 van 1969, artikel 4 van Wet 72 van 1985 en artikel 9 van Wet 2 van 1988 10

2. Artikel 22 van die Wet op Seksuele Misdrywe, 1957, word hierby gewysig—
 - (a) deur paragraaf (c) te skrap; en
 - (b) deur paragrafe (d) en (e) deur onderskeidelik die volgende paragrafe te vervang: 15
 - “(d) in die geval van 'n in artikel 11, 12A of 18 bedoelde misdryf, met 'n boete, of gevangenisstraf vir 'n tydperk van hoogstens vyf jaar;

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, 1955, so as to provide for an increase of the amount which may be fixed by a magistrate in respect of a recognizance as security to keep the peace; to amend the Sexual Offences Act, 1957, so as to provide that a fine may be imposed upon conviction of certain offences; to amend the Criminal Procedure Act, 1977, so as to provide that an admission of guilt fine may be paid in respect of a failure in certain instances to appear in court or to remain in attendance at criminal proceedings; to empower a court to extend the period of enquiry into the mental capacity of an accused under certain circumstances in his absence; to provide that malicious injury to property constitutes a competent verdict on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, or attempted housebreaking; to exempt certain serious common law offences from offences in respect of which a conviction will fall away as a previous conviction after a period of 10 years; and to provide that a magistrate or certain police officials may under certain circumstances consent to a medical examination of a minor; to amend the Internal Security Act, 1982, so as to effect a technical correction; and to provide for matters incidental thereto.

(English text signed by the State President.)

(Assented to 3 March 1992.)

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

Amendment of section 384 of Act 56 of 1955

1. Section 384 of the Criminal Procedure Act, 1955, is hereby amended—

- (a) by the substitution in subsection (1) for the expression “twenty-five pounds” of the expression “R2 000”; and
- (b) by the substitution in subsection (3) for the expression “one month” of the expression “six months”.

Amendment of section 22 of Act 23 of 1957, as substituted by section 4 of Act 68 of 1967 and amended by section 4 of Act 57 of 1969, section 4 of Act 72 of 1985 and section 9 of Act 2 of 1988

2. Section 22 of the Sexual Offences Act, 1957, is hereby amended—

- (a) by the deletion of paragraph (c); and
- (b) by the substitution for paragraphs (d) and (e) of the following paragraphs, respectively:
 - “(d) in the case of an offence referred to in section 11, 12A or 18, with a fine, or [to] imprisonment for a period not exceeding five years;

- (e) in die geval van 'n in artikel 10, 12(1) of 13(1) bedoelde misdryf, met gevangenisstraf vir 'n tydperk van hoogstens sewe jaar;”.

Wysiging van artikel 55 van Wet 51 van 1977, soos gewysig deur artikel 14 van Wet 59 van 1983 en artikel 5 van Wet 33 van 1986

3. Artikel 55 van die Strafproseswet, 1977 (hieronder die Hoofwet genoem), word hierby gewysig deur subartikel (2A) deur die volgende subartikel te vervang:

“(2A) (a) Indien die hof 'n lasbrief ingevolge subartikel (2) uitreik ten opsigte van 'n dagvaarding wat ooreenkomstig artikel 57(1)(a) geëndosseer is—

(i) moet 'n endossement met dieselfde strekking op die betrokke lasbrief aangebring word;

(ii) kan die hof 'n verdere endossement op die lasbrief aanbring met die strekking dat die beskuldigde sy skuld ten opsigte van sy versuim om in antwoord op die dagvaarding te verskyn of om by die strafregtelike verrigtinge aanwesig te bly, kan erken en dat hy by inhegtenisneming 'n op die lasbrief bepaalde boete, wat nie die bedrag wat ingevolge subartikel (2) opgelê kan word, oorskry nie, ten opsigte van bedoelde versuim aan 'n klerk van die landdroshof of by 'n polisiekantoor kan betaal sonder om in die hof te verskyn.

(b) Die boete wat ingevolge paragraaf (a) betaal is by 'n polisiekantoor of aan 'n klerk van 'n landdroshof behalwe die landdroshof wat die lasbrief tot inhegtenisneming uitgereik het, moet so spoedig doenlik saam met die betrokke lasbrief gestuur word aan die klerk van die landdroshof wat daardie lasbrief uitgereik het, en bedoelde klerk van die hof moet so spoedig doenlik daarna die wesenlike besonderhede van bedoelde erkenning van skuld in die strafsakeboek van erkennings van skuld inskryf, waarop die betrokke beskuldigde geag word deur die hof ten opsigte van die betrokke misdryf skuldig bevind en gevonnissen te gewees het.”.

Wysiging van artikel 79 van Wet 51 van 1977

4. Artikel 79 van die Hoofwet word hierby gewysig deur by subartikel (2) die volgende paragraaf te voeg, terwyl die bestaande subartikel paragraaf (a) word :

“(b) Wanneer die tydperk van verwysing vir die eerste keer kragtens paragraaf (a) verleng word, kan sodanige verlenging in die afwesigheid van die beskuldigde toegestaan word tensy die beskuldigde of sy regsverteenwoordiger anders versoek.”.

Wysiging van artikel 262 van Wet 51 van 1977, soos gewysig deur artikel 6 van Wet 64 van 1982

5. Artikel 262 van die Hoofwet word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Indien die getuienis op 'n aanklag weens huisbraak met die opset om 'n aan die aanklaer onbekende misdryf te pleeg, hetsy die aanklag ingevolge 'n wet of die gemene reg gestel word, nie die misdryf huisbraak met die opset om 'n aan die aanklaer onbekende misdryf te pleeg, bewys nie, maar die misdryf huisbraak met die opset om 'n bepaalde misdryf te pleeg, of die misdryf opsetlike saakbeskadiging, kan die beskuldigde aan die aldus bewese misdryf skuldig bevind word.”; en

(b) deur die volgende subartikel by te voeg:

“(3) Indien die getuienis op 'n aanklag weens poging tot huisbraak met die opset om 'n in die aanklag vermelde misdryf te pleeg, of poging tot huisbraak met die opset om 'n aan die aanklaer onbekende misdryf te pleeg, hetsy die aanklag ingevolge 'n wet of die gemene reg gestel word, nie die misdryf poging tot huisbraak met die opset om die aldus vermelde misdryf te pleeg, of poging tot huisbraak met die opset om 'n aan die aanklaer onbekende misdryf te pleeg, bewys nie, maar die misdryf opsetlike saakbeskadiging, kan die beskuldigde aan die aldus bewese misdryf skuldig bevind word.”.

- (e) in the case of an offence referred to in section 10, 12(1) or 13(1), to imprisonment for a period not exceeding seven years;”.

Amendment of section 55 of Act 51 of 1977, as amended by section 14 of Act 59 of 1983 and section 5 of Act 33 of 1986

5 3. Section 55 of the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (2A) of the following subsection:

10 “(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;

15 (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.

20 (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.”.

Amendment of section 79 of Act 51 of 1977

30 4. Section 79 of the principal Act is hereby amended by the addition to subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):

35 “(b) When the period of committal is for the first time extended under paragraph (a), such extension may be granted in the absence of the accused unless the accused or his legal representative requests otherwise.”.

Amendment of section 262 of Act 51 of 1977, as amended by section 6 of Act 64 of 1982

5. Section 262 of the principal Act is hereby amended—

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

45 “(2) If the evidence on a charge of housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of housebreaking with intent to commit an offence to the prosecutor unknown, but the offence of housebreaking with intent to commit a specific offence, or the offence of malicious injury to property, the accused may be found guilty of the offence so proved.”; and

(b) by the addition of the following subsection:

50 “(3) If the evidence on a charge of attempted housebreaking with intent to commit an offence specified in the charge, or attempted housebreaking with intent to commit an offence to the prosecutor unknown, whether the charge is brought under a statute or the common law, does not prove the offence of attempted housebreaking with intent to commit the offence so specified, or attempted housebreaking with intent to commit an offence to the prosecutor unknown, but the offence of malicious injury to property, the accused may be found guilty of the offence so proved.”.

Wysiging van artikel 271A van Wet 51 van 1977, soos ingevoeg deur artikel 12 van Wet 5 van 1991**6. Artikel 271A van die Hoofwet word hierby gewysig—**

- (a) deur in paragraaf (a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“ 'n misdryf **[in Bylae 1 vermeld]** waarvoor gevangenisstraf vir 'n langer tydperk as ses maande sonder die keuse van 'n boete opgelê kan word, en—”; en

- (b) deur paragraaf (b) en die woorde wat daarop volg deur die volgende paragraaf en woorde te vervang:

“(b) enige ander misdryf as dié **[in Bylae 1 vermeld]** waarvoor gevangenisstraf vir 'n langer tydperk as ses maande sonder die keuse van 'n boete opgelê kan word,

verval daardie skuldigbevinding as 'n vorige veroordeling indien 'n tydperk van 10 jaar verloop het na die datum van skuldigbevinding aan die betrokke misdryf, tensy gedurende daardie tydperk so 'n persoon aan 'n misdryf **[vermeld in Bylae 1]** waarvoor gevangenisstraf vir 'n langer tydperk as ses maande sonder die keuse van 'n boete opgelê kan word, skuldig bevind is.”.

Invoeging van artikel 335B in Wet 51 van 1977**7. Die volgende artikel word hierby in die Hoofwet na artikel 335A ingevoeg:**

“Mediese ondersoeke van minderjariges teenoor of in verband met wie sekere misdrywe gepleeg is

335B. (1) Indien 'n polisiebeampte belas met die ondersoek van 'n saak van oordeel is dat dit nodig is dat 'n minderjarige persoon ten opsigte van wie daar beweer word dat 'n misdryf van 'n onsedelike of gewelddadige aard gepleeg is, deur 'n distriksgeneesheer of, indien hy nie beskikbaar is nie, 'n geregistreerde geneesheer ondersoek moet word, maar dat die ouer of voog van sodanige minderjarige—

- (a) nie binne 'n redelike tyd opgespoor kan word nie;
(b) nie betyds toestemming kan verleen nie;
(c) 'n verdagte is ten opsigte van die misdryf as gevolg waarvan die ondersoek uitgevoer moet word;
(d) onredelik weier om toe te stem dat die ondersoek uitgevoer word;
(e) weens geestesongesteldheid onbevoeg is om toe te stem dat die ondersoek uitgevoer word; of
(f) oorlede is,

kan 'n landdros, op skriftelike aansoek van daardie polisiebeampte en indien hy oortuig is dat die mediese ondersoek noodsaaklik is, die nodige toestemming verleen dat so 'n ondersoek uitgevoer word.

(2) Indien 'n landdros nie beskikbaar is om toestemming soos bedoel in subartikel (1) te verleen nie, kan 'n offisier soos omskryf in artikel 1 van die Polisiewet, 1958 (Wet No. 7 van 1958), of die polisiebeampte in bevel van die plaaslike polisiekantoor skriftelik sodanige toestemming verleen indien die polisiebeampte belas met die ondersoek van die saak onder eed verklaar dat 'n landdros se toestemming nie binne 'n redelike tyd bekom kan word nie en die distriksgeneesheer of geregistreerde geneesheer onder eed verklaar dat die doel van die mediese ondersoek verydel sal word indien die ondersoek nie onverwyld uitgevoer word nie.”.

Wysiging van artikel 29 van Wet 74 van 1982, soos gewysig deur artikel 13 van Wet 138 van 1991

8. Artikel 29 van die Wet op Binnelandse Veiligheid, 1982, word hierby gewysig deur in die woorde wat op paragraaf (b) van subartikel (1) volg die uitdrukking “subartikel (4)” deur die uitdrukking “subartikel (3)” te vervang.

Kort titel

9. Hierdie Wet heet die Strafrekwysigingswet, 1992.

Amendment of section 271A of Act 51 of 1977, as inserted by section 12 of Act 5 of 1991

6. Section 271A of the principal Act is hereby amended—

5 (a) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:

“an offence **[specified in Schedule 1]** for which the punishment may be a period of imprisonment exceeding six months without the option of a fine, and—”; and

10 (b) by the substitution for paragraph (b) and the words following thereupon, of the following paragraph and words:

“(b) any other offence than that **[referred to in Schedule 1]** for which the punishment may be a period of imprisonment exceeding six months without the option of a fine, that conviction shall fall away as a previous conviction if a period of 10 years has elapsed after the date of conviction of the said offence, unless during that period such person has been convicted of an offence **[specified in Schedule 1]** for which the punishment may be a period of imprisonment exceeding six months without the option of a fine.”.

20 Insertion of section 335B in Act 51 of 1977

7. The following section is hereby inserted in the principal Act after section 335A:

“Medical examination of minors towards or in connection with whom certain offences have been committed

25 **335B. (1)** If a police official charged with the investigation of a case is of the opinion that it is necessary that a minor in respect of whom it is alleged that an offence of an indecent or violent nature has been committed be examined by a district surgeon or, if he is not available, by a registered medical practitioner, but that the parent or guardian of such minor—

30 (a) cannot be traced within a reasonable time;
(b) cannot grant consent in time;
(c) is a suspect in respect of the offence in consequence of which the examination must be conducted;
35 (d) unreasonably refuses to consent that the examination be conducted;
(e) is incompetent on account of mental disorder to consent that the examination be conducted; or
(f) is deceased,

40 a magistrate may, on the written application of that police official and if he is satisfied that the medical examination is necessary, grant the necessary consent that such examination be conducted.

45 (2) If a magistrate is not available to grant consent as referred to in subsection (1), a commissioned officer as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), or the police official in charge of the local police station may in writing grant such consent if the police official charged with the investigation of the case declares under oath that the consent of a magistrate cannot be obtained within a reasonable period of time and the district surgeon or registered medical practitioner declares under oath that the purpose of the medical examination will be defeated if the examination is not conducted forthwith.”.

Amendment of section 29 of Act 74 of 1982, as amended by section 13 of Act 138 of 1991

55 8. Section 29 of the Internal Security Act, 1982, is hereby amended by the substitution in the words following upon paragraph (b) of subsection (1) for the expression “subsection (4)” of the expression “subsection (3)”.

Short title

9. This Act shall be called the Criminal Law Amendment Act, 1992.

Amendment of section 271A of Act 51 of 1977, as inserted by section 13 of Act 5 of 1981

6. Section 271A of the principal Act is hereby amended—
(a) by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:
"an offence [specified in Schedule 1] for which the punishment may be a period of imprisonment exceeding six months without the option of a fine, and—"; and
(b) by the substitution for paragraph (b) and the words following thereupon, of the following paragraph and words:
"(b) any other offence than that [referred to in Schedule 1] for which the punishment may be a period of imprisonment exceeding six months without the option of a fine, that conviction shall fall away as a previous conviction if a period of 10 years has elapsed after the date of conviction of the said offence, unless during that period such person has been convicted of an offence [specified in Schedule 1] for which the punishment may be a period of imprisonment exceeding six months without the option of a fine."

30 Insertion of section 335B in Act 51 of 1977

7. The following section is hereby inserted in the principal Act after section 335A:

"Medical examination of minors towards or in connection with whom certain offences have been committed

335B. (1) If a police official charged with the investigation of a case is of the opinion that it is necessary that a minor in respect of whom it is alleged that an offence of an indecent or violent nature has been committed be examined by a district surgeon or, if he is not available, by a registered medical practitioner, but that the parent or guardian of such minor—

- (a) cannot be traced within a reasonable time;
- (b) cannot grant consent in time;
- (c) is a suspect in respect of the offence in consequence of which the examination must be conducted;
- (d) unreasonably refuses to consent that the examination be conducted;
- (e) is incompetent on account of mental disorder to consent that the examination be conducted; or
- (f) is deceased,

a magistrate may, on the written application of that police official and if he is satisfied that the medical examination is necessary, grant the necessary consent that such examination be conducted.

(2) If a magistrate is not available to grant consent as referred to in subsection (1), a commissioned officer as defined in section 1 of the Police Act, 1952 (Act No. 7 of 1952), or the police official in charge of the local police station may in writing grant such consent if the police official charged with the investigation of the case declares under oath that the consent of a magistrate cannot be obtained within a reasonable period of time and the district surgeon or registered medical practitioner declares under oath that the purpose of the medical examination will be defeated if the examination is not conducted forthwith."

Amendment of section 29 of Act 74 of 1982, as amended by section 13 of Act 138 of 1981

8. Section 29 of the Internal Security Act, 1982, is hereby amended by the substitution in the words following upon paragraph (b) of subsection (1) for the expression "subsection (4)" of the expression "subsection (3)".