



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 679

Cape Town
Kaapstad

28 January 2022

No. 45822

THE PRESIDENCY

No. 786 **28 January 2022**

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

Act No. 12 of 2021: Criminal and Related Matters Amendment Act, 2021

DIE PRESIDENSIE

No. 786 **28 Januarie 2022**

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

Wet No. 12 van 2021: Wysigingswet op die Strafwet en Verwante Aangeleenthede, 2021

ISSN 1682-5845



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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.
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(English text signed by the President)
(Assented to 25 January 2022)

ACT

To amend—

- the Magistrates' Courts Act, 1944, so as to provide for the appointment of intermediaries and the giving of evidence through intermediaries in proceedings other than criminal proceedings; the oath and competency of intermediaries; and the giving of evidence through audiovisual link in proceedings other than criminal proceedings;
- the Criminal Procedure Act, 1977, so as to further regulate the granting and cancellation of bail; the giving of evidence by means of closed circuit television or similar electronic media; the giving of evidence by a witness with physical, psychological or mental disability; the appointment, oath and competency of intermediaries; and the right of a complainant in a domestic related offence to participate in parole proceedings;
- the Criminal Law Amendment Act, 1997, so as to further regulate sentences in respect of offences that have been committed against vulnerable persons; and
- the Superior Courts Act, 2013, so as to provide for the appointment of intermediaries and the giving of evidence through intermediaries in proceedings other than criminal proceedings; the oath and competency of intermediaries; and the giving of evidence through audiovisual link in proceedings other than criminal proceedings, and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Insertion of sections 51A, 51B and 51C in Act 32 of 1944

1. The following sections are hereby inserted after section 51 of the Magistrates' Courts Act, 1944:

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

—————
(Engelse teks deur die President geteken)
(Goedgekeur op 25 Januarie 2022)
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WET

Tot wysiging van—

- die Wet op Landdroshowe, 1944, ten einde voorsiening te maak vir die aanstelling van tussengangers en die aflê van getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie; die eed en bevoegdheid van tussengangers; en die aflê van getuienis deur oudiovisuele skakel in verrigtinge wat nie strafregtelike verrigtinge is nie;
- die Strafbregwet, 1977, ten einde die toestaan en intrekking van borgtog; die aflê van getuienis by wyse van geslotekringtelevisie of soortgelyke elektroniese media; die aflê van getuienis deur 'n getuie met fisieke, sielkundige of verstandelike gestremdheid; die aanstelling, eed en bevoegdheid van tussengangers; en die reg van 'n klaer in 'n gesinsverwante misdryf om aan paroolverrigtinge deel te neem, verder te reël;
- die Strafbregwysigingswet, 1997, ten einde vonnisse ten opsigte van misdrywe wat teen trefbare persone gepleeg is, verder te reël; en
- die Wet op Hoër Howe, 2013, ten einde voorsiening te maak vir die aanstelling van tussengangers en die aflê van getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie; die eed en bevoegdheid van tussengangers; en die aflê van getuienis deur oudiovisuele skakel in verrigtinge wat nie strafregtelike verrigtinge is nie, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DIE PARLEMENT van die Republiek van Suid-Afrika verorden, soos volg:—

Invoeging van artikels 51A, 51B en 51C in Wet 32 van 1944

1. Die volgende artikels word hierby na artikel 51 van die Wet op Landdroshowe, 1944, ingevoeg:

“Evidence through intermediaries in proceedings other than criminal proceedings

51A. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness— 5

- (a) under the biological or mental age of 18 years;
- (b) who suffers from a physical, psychological, mental or emotional condition; or
- (c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006), 10

to give his or her evidence through that intermediary, if it appears to that court that the proceedings would expose such a witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings. 15

(2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary, except examination by the court, may take place in any manner other than through that intermediary.

(b) The intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness. 20

(3) If a court appoints an intermediary in terms of subsection (1), the court may direct that the relevant witness gives his or her evidence at any place—

- (a) which is informally arranged to set that witness at ease; 25
- (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, the intermediary, as well as the witness, during his or her testimony. 30

(4) (a) The Minister may, by notice in the *Gazette*, determine the persons or the category or class of persons who are competent to be appointed as intermediaries.

(b) An intermediary appearing at proceedings in terms of this section who is not in the full-time employment of the State must be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as prescribed by the rules made by the Rules Board for Courts of Law under the Rules Board for Courts of Law Act, 1985. 35

(5) (a) A court must provide reasons for refusing any application for the appointment of an intermediary, immediately upon refusal, which reasons must be entered into the record of the proceedings. 40

(b) A court may, on application by a party affected by the refusal contemplated in paragraph (a), and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced that refusal, review its decision. 45

(6) An intermediary referred to in subsection (1) may be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.

(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court, is absent for any reason, becomes unable, in the opinion of the court, to act as an intermediary or dies, the court may, in the interests of justice and after due consideration of the arguments put forward by the parties— 50

- (a) postpone the proceedings in order to obtain the intermediary’s presence; 55
- (b) summons the intermediary to appear before the court to advance reasons for being absent;
- (c) direct that the appointment of the intermediary be revoked and appoint another intermediary; or 60

“Getuienis deur bemiddeling van tussengangers in verrigtinge wat nie strafregtelike verrigtinge is nie

- 51A.** (1) 'n Hof kan, op aansoek deur enige party tot verrigtinge ingevolge Deel II van hierdie Wet voor die hof, of uit eie beweging en behoudens subartikel (4), 'n bevoegde persoon as tussenganger aanstel ten einde 'n getuie—
- (a) onder die biologiese of verstandsonderdom van 18 jaar;
- (b) wat aan 'n fisiese, sielkundige, verstandelike of emosionele toestand ly; of
- (c) wat 'n ouer persoon is soos in artikel 1 van die 'Older Persons Act', 2006 (Wet No. 13 van 2006), as 'older person' omskryf, in staat te stel om sy of haar getuienis deur bemiddeling van daardie tussenganger af te lê, indien dit vir daardie hof blyk dat die verrigtinge so 'n getuie aan onnodige sielkundige, verstandelike of emosionele spanning, trauma of lyding sal blootstel indien hy of sy by daardie verrigtinge getuienis aflê.
- (2) (a) Geen ondervraging, kruisondervraging of herondervraging van enige getuie ten opsigte van wie 'n hof 'n tussenganger aangestel het, behalwe ondervraging deur die hof, mag op enige wyse anders as deur bemiddeling van daardie tussenganger plaasvind nie.
- (b) Die tussenganger kan, tensy die hof anders gelas, die algemene strekking van enige vraag aan die tersaaklike getuie oordra.
- (3) Indien 'n hof 'n tussenganger ingevolge subartikel (1) aanstel, kan die hof gelas dat die tersaaklike getuie sy of haar getuienis op enige plek lewer—
- (a) wat informeel ingerig is om daardie getuie op sy of haar gemak te stel;
- (b) wat so geleë is dat enige persoon wie se teenwoordigheid daardie getuie kan ontstel, buite sig en hoorafstand van daardie getuie is; en
- (c) wat die hof en enige persoon wie se teenwoordigheid by die tersaaklike verrigtinge nodig is, in staat stel om die tussenganger, sowel as die getuie te sien en te hoor gedurende sy of haar getuienis, hetsy regstreeks of deur enige elektroniese of ander toestelle.
- (4) (a) Die Minister kan, by kennisgewing in die *Staatskoerant*, die persone of die kategorie of klas persone wat bevoeg is om as tussengangers aangestel te word, bepaal.
- (b) 'n Tussenganger wat by verrigtinge verskyn ingevolge hierdie artikel en wat nie voltyds in diens van die Staat is nie, moet sodanige reis- en onderhoud- en ander toelae betaal word ten opsigte van die dienste wat hy of sy lewer, soos voorgeskryf deur die reëls deur die Reëlsraad vir Geregshowe kragtens die Wet op die Reëlsraad vir Geregshowe, 1985, gemaak.
- (5) (a) 'n Hof moet redes verstrek vir die weiering van enige aansoek om die aanstelling van 'n tussenganger, onmiddellik by weiering, welke redes op die rekord van verrigtinge geplaas moet word.
- (b) 'n Hof kan, op aansoek van 'n party wat deur die weiering beoog in paragraaf (a) geraak word, en indien die hof oortuig is dat daar 'n wesenlike verandering is ten opsigte van enige feit of omstandigheid wat daardie weiering beïnvloed het, sy beslissing hersien.
- (6) 'n Tussenganger beoog in subartikel (1), kan gedagvaar word om op 'n gespesifiseerde datum en op 'n gespesifiseerde plek en tyd voor die hof te verskyn om as 'n tussenganger op te tree.
- (7) Indien, by die aanvang of op enige stadium voor die afhandeling van die betrokke verrigtinge, 'n tussenganger deur die hof aangestel om enige rede afwesig is, na die oordeel van die hof onbekwaam raak om as tussenganger op te tree of sterf, kan die hof, in die belang van geregtigheid en na behoorlike oorweging van die betoë deur die partye gelewer—
- (a) die verrigtinge uitstel ten einde die tussenganger se teenwoordigheid te bekom;
- (b) die tussenganger dagvaar om voor die hof te verskyn om redes vir sy of haar afwesigheid te verskaf;
- (c) gelas dat die aanstelling van die tussenganger ingetrek word en 'n ander tussenganger aanstel; of