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THE PRESIDENCY

No. 169

18 February 2009

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

No. 65 of 2008: Criminal Procedure Amendment Act, 2008.



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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.

ACT

To amend the Criminal Procedure Act, 1977, to provide for the postponement of certain criminal proceedings against an accused person in custody awaiting trial through audiovisual link; to further regulate the falling away of certain convictions as previous convictions after the expiry of a fixed period; to provide for the expungement of criminal records of certain persons in respect of whom certain sentences have been imposed after the compliance with certain requirements and the expiry of a fixed period; to provide for the expungement of certain criminal records of persons under legislation enacted before the Constitution of the Republic of South Africa, 1993, took effect; and to provide for matters connected therewith.

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

Insertion of sections 159A, 159B, 159C and 159D in Act 51 of 1977

1. The following sections are hereby inserted in the Criminal Procedure Act, 1977 (hereinafter referred to as the principal Act), after section 159:

“Postponement of certain criminal proceedings through audiovisual link

159A. (1) For purposes of this section and sections 159B, 159C and 159D, unless the context indicates otherwise—

- (a) **‘appropriate person’** means any court official or any other person at the court point and remote point who is required to be, or may be, present at the proceedings, including the presiding officer, the prosecutor, the accused person’s legal representative, any technical assistant, the clerk of the court, any witnesses, and members of the public who are entitled to be present;
- (b) **‘audio link’** means a live telephone link between the court point and the remote point which are both equipped with facilities which will enable audio communication between all appropriate persons at the court point and the remote point;
- (c) **‘audiovisual link’** means a live television link between the court point and the remote point which are both equipped with facilities which will enable all appropriate persons at the court point and the remote

- point to follow the proceedings and see and hear all the appropriate persons;
- (d) **'court point'** means the courtroom or other place where the court having jurisdiction is sitting;
 - (e) **'correctional facility'** means a correctional facility as defined in the Correctional Services Act, 1998 (Act No. 111 of 1998), but does not include a police cell or lock-up; and
 - (f) **'remote point'** means the room or place at the designated correctional facility where the accused person appearing through audiovisual link is located.
- (2) An accused person—
- (a) who is over the age of 18 years;
 - (b) who is in custody in a correctional facility in respect of an offence;
 - (c) who has already appeared before a court;
 - (d) whose case has been postponed and who is in custody pending his or her trial; and
 - (e) who is required to appear or to be brought before a court in any subsequent proceedings (whether before, during or after the trial or conviction and sentence) for the purpose of—
 - (i) a further postponement of the case; or
 - (ii) consideration of release on bail in terms of section 60, 63, 63A, 307, 308A or 321, where the granting of bail is not opposed by the prosecutor or where the granting of bail does not require the leading of evidence,
- is not required to appear or to be brought physically before the court but may, subject to the provisions of this section, sections 159B, 159C and 159D, appear before court by audiovisual link and is deemed to be physically before court, unless the court directs, in the interests of justice, that he or she appears or be brought physically before it.
- (3) Any proceedings in terms of subsection (2) shall be regarded as having been held in the presence of the accused person if, during the proceedings, that person—
- (a) is held in custody in a correctional facility; and
 - (b) is able to follow the court proceedings and the court is able to see and hear the accused person by means of audiovisual link.
- (4) The remote point shall be regarded as being a part of the court.

Requirements for audiovisual appearance by accused person

- 159B.** (1) An accused person appearing before a court by audiovisual link must do so from a place at which the requirements referred to in subsections (2) and (3) and section 159C are complied with.
- (2) The Minister may, subject to the provisions of this section, designate any correctional facility which has been suitably equipped as a place where proceedings in terms of section 159A can be held.
- (3) Both the court point and the remote point in the correctional facility designated in terms of subsection (2) must be equipped with facilities that, in accordance with any requirements prescribed by regulations and any directions of the court referred to in section 159C, allow—
- (a) private communication to take place between the accused person and any legal practitioner representing that person in the proceedings at the court point; and
 - (b) documents to be transmitted between both points by the persons referred to in paragraph (a)—
 - (i) at any time during the proceedings;
 - (ii) during any adjournment of the hearing in the proceedings referred to in paragraph (a); or
 - (iii) at any time on the day of a hearing, shortly before or after the hearing.

(4) The court must, at every appearance of an accused person in terms of section 159A, inquire into the physical and mental well-being of the accused person and for that purpose may, where necessary, direct that the facilities referred to in section 159C be used in such a manner which will enable the presiding officer to satisfy himself or herself as to the accused person's well-being as that presiding officer would be able to do if the accused person were physically before the court. 5

Technical requirements for use of audiovisual link

159C. (1) For the purposes of proceedings in terms of section 159A, both the court point and the remote point must be equipped with facilities that enable all appropriate persons— 10

- (a) at the court point to see and hear a person appearing before the court or making a submission or any other appropriate person at the remote point and to follow the proceedings; and
- (b) at the remote point to see and hear all appropriate persons at the court point and to follow the proceedings. 15

(2) (a) In the event of—

- (i) an interruption of an audiovisual link;
- (ii) an audiovisual link being of a poor quality which, in the opinion of the court, is not in the interests of justice to continue the proceedings by way of audiovisual link; or 20
- (iii) any of the facilities referred to in subsection (1) malfunctioning,

the court must, subject to paragraph (b), direct that the matter stand down and cause the accused person to be brought physically before the court on the day in question. 25

(b) If it is not reasonably practicable to bring the accused person to court on the day, as provided for in paragraph (a), the court must, prior to the expiry of the existing court order for the accused person's detention, postpone the proceedings in the absence of the accused person, to the next court day. 30

(3) The Minister may make any regulations necessary to give effect to the technical requirements referred to in subsection (1).

(4) A court may, in order to ensure a fair trial, give any directions in any case as it may deem necessary, which may not be inconsistent with any provision of this Act or any regulation made thereunder. 35

Protection of communication between accused person and legal representative

159D. Without limiting any other protection applying to it, a communication by audio link or audiovisual link, or a document transmitted between an accused person and his or her legal representative as provided for in section 159B(3), is confidential and inadmissible in any proceedings as if the communication took place or the document was produced while they were in the presence of each other.”. 40

Substitution of section 271A of Act 51 of 1977, as inserted by section 12 of Act 5 of 1991 and amended by section 6 of Act 4 of 1992 45

2. The following section is hereby substituted for section 271A of the principal Act:

“Certain convictions fall away as previous convictions after expiration of 10 years

271A. Where a court has convicted a person of— 50