

REPUBLIC OF SOUTH AFRICA

CRIMINAL PROCEDURE AMENDMENT BILL

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

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B 12B—2021]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Criminal Procedure Act, 1977, so as to further regulate the publication of information which reveals or may reveal the identity of an accused, a witness or person against whom an offence has allegedly been committed who is under the age of 18 years; and to provide for matters connected therewith.

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

Amendment of section 154 of Act 51 of 1977, as amended by section 12 of Act 33 of 1986, section 3 of Act 103 of 1987 and section 68 of Act 32 of 2007

1. Section 154 of the Criminal Procedure Act, 1977, is hereby amended— 5
- (a) by the substitution for subsection (3) of the following subsection: 5
- “(3) (a) No person shall before, during or at any stage after the conclusion of criminal proceedings, in any manner, including on any social media or electronic platform publish any information which reveals or may reveal the identity of— 10
- (i) an accused who is or was under the age of 18 years at the time of the alleged commission of an offence; 10
- (ii) a witness who is or was under the age of 18 years at the time of the alleged commission of an offence; or 10
- (iii) a person against whom an offence has allegedly been committed who is or was under the age of 18 years at the time of the alleged commission of the offence, 15
- unless the publication of such information is authorized in terms of subsection (3B). 15
- (b) Subject to paragraph (a), the presiding judge or judicial officer at such criminal proceedings, may authorize the publication of so much of any information relating to the proceedings as he or she may deem fit, if the publication thereof would in his or her opinion be just and equitable and in the interest of any particular person.”; and 20
- (b) by the insertion after subsection (3) of the following subsections: 25
- “(3A) Notwithstanding subsection (3)(a), and in the event where substantial injustice would result and no other means are available, information may be published by a police official or by any other person, who is authorized by the National Commissioner of the South African Police Service or a person delegated by him or her— 30
- (a) which reveals or may reveal the identity of an accused under the age of 18 years, if— 30
- (i) (aa) there are reasonable grounds to suspect that the accused committed an offence listed in Schedule 3 to the Child Justice Act, 2008 (Act No. 75 of 2008), or an 35

- offence which, if committed by an adult, would have justified a term of imprisonment exceeding 10 years; or
(bb) the accused escaped from lawful custody or any other place of detention or was released on bail or a warning and failed to appear or remain in attendance at the proceedings, as contemplated in section 67(1); 5
- (ii) the South African Police Service has been unsuccessful in locating the whereabouts of the accused;
- (iii) the information so published does not reveal the age of the accused or the fact that the accused is involved in the commission of the offence; and 10
- (iv) it is necessary as a measure to locate the whereabouts of the accused;
- (b) which reveals or may reveal the identity of a witness under the age of 18 years, if— 15
- (i) it is necessary as a measure to locate the whereabouts of the witness to obtain a statement from him or her concerning the commission of any alleged offence, or to testify in criminal proceedings; and
- (ii) the information so published does not reveal the age of the person or the fact the he or she may be a witness at criminal proceedings; 20
- (c) which reveals or may reveal the identity of a person under the age of 18 years against whom an offence has allegedly been committed, if— 25
- (i) it is necessary to locate the whereabouts of the person to prevent harm to such a person; and
- (ii) the information so published is reasonably necessary in the circumstances to identify the person, or any other person who may have relevant information about the alleged offence or whereabouts of the person; or 30
- (d) which reveals or may reveal the identity of a person under the age of 18 years, whether or not an offence has allegedly been committed against the person, if— 35
- (i) it is necessary to locate the whereabouts of the person to prevent harm to such a person; and
- (ii) the information so published is reasonably necessary in the circumstances to identify the person, or any other person who may have relevant information about— 40
- (aa)* an alleged offence which may have been committed against the person; or
- (bb)* the whereabouts of the person.
- (3B) (a) The court before which criminal proceedings contemplated in subsection (3) have been concluded may, on application of an accused, a witness or a person contemplated in subsection (3)(a) who has attained the age of 18 years and where the court has granted an order that extends into adulthood, grant an order authorizing the publication of information which reveals the identity of the applicant, if the court is satisfied that the applicant understands the nature and effect of a court order in terms of this subsection. 50
- (b) The High Court before which, or in whose area of jurisdiction, the criminal proceedings contemplated in subsection (3) have been concluded may, on the application of an interested person, grant an order authorizing the publication of information which may reveal the identity of a person contemplated in subsection (3)(a). 55
- (c) In determining whether an order may be granted, a court referred to in paragraph (a) or (b) must take into account all relevant factors, including—
- (i) the nature of the charges against the accused;
- (ii) the age of the persons referred to in subsection (3)(a); 60
- (iii) the period which has elapsed since completion of the criminal proceedings and the application;

- (iv) the interest of the public or any person or category of persons in the publication of such information;
 - (v) the interest of society to encourage the reporting of offences and the participation of witnesses and victims of offences in criminal justice processes; 5
 - (vi) the likelihood that the publication of such information, which reveals the identity of a person contemplated in subsection (3)(a), will also reveal the identity of any other person contemplated in subsection (1), (2), (3)(a) or (5);
 - (vii) the nature and extent of any hardship that a person contemplated in subsection (3)(a) or any person related to such person may suffer if such information is published; and 10
 - (viii) the effect of the order on—
 - (aa) a person’s freedom of expression; and
 - (bb) the dignity, security and privacy of a person referred to in subsection 3(a) or any person related to such person. 15
- (d) A court may, if it deems it in the interest of the administration of justice, hold a hearing to determine whether an order should be granted.
- (e) A hearing contemplated in paragraph (d) must take place behind closed doors and no person shall be present at such hearing, unless his or her presence is necessary in connection with such hearing or is authorized by the court. 20
- (f) The verdict of the court must be delivered in open court: Provided that the court may decline to state in open court all or any of the facts, reasons or other considerations that it has taken into account in reaching its verdict, if it is of the opinion that the identity of a person contemplated in subsection (3)(a) may be revealed thereby. 25
- (g) No person shall in any manner disclose—
- (i) the contents of an application;
 - (ii) any evidence taken, information provided or submissions made at the hearing; or
 - (iii) any other information that may reveal the identity of a person contemplated in subsection (3)(a), 30
- unless it is authorized by the court or required in the course of further legal proceedings relating to the hearing or in the course of the administration of justice.”. 35

Short title and commencement

2. This Act is called the Criminal Procedure Amendment Act, 2021, and commences on the date of publication in the *Gazette*.

**MEMORANDUM ON OBJECTS OF CRIMINAL PROCEDURE
AMENDMENT BILL**

1. PURPOSE OF BILL

- 1.1 Section 154 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the “Act”), prohibits the publication of certain information relating to criminal proceedings. Section 154(3) provides that no person shall publish in any manner whatsoever any information which reveals or may reveal the identity of an accused under the age of 18 years or of a witness at criminal proceedings who is under the age of 18 years: Provided that the presiding judge or judicial officer may authorise the publication of so much of such information as he or she may deem fit if the publication thereof would in his or her opinion be just and equitable and in the interest of any particular person.
- 1.2 In *Centre for Child Law and Others v Media 24 Limited and Others* 2019 ZACC 46 (the “*Centre for Child Law* judgment”), the Constitutional Court held that section 154(3) of the Act does not afford protection to child victims of criminal offences and that the protection does not continue to apply even after a child accused, witness or victim turns 18 years of age, whereas it ought to, and section 154(3) is, for those reasons, inconsistent with the Constitution of the Republic of South Africa, 1996 (the “Constitution”). The declaration of constitutional invalidity was suspended for 24 months to afford Parliament an opportunity to correct the defect giving rise to the constitutional invalidity. The Constitutional Court granted interim relief by way of a reading-in to ensure that, during the period of suspension of invalidity, the protection—
- (a) afforded by section 154(3) is also extended to child victims of criminal offences; and
 - (b) continues to apply after a child accused, witness or victim turns 18 years of age.
- 1.3 The Criminal Procedure Amendment Bill, 2021 (the “Bill”), seeks to amend section 154 to address the constitutional invalidity of the provision.

2. OBJECTS OF BILL

- 2.1 **Clause 1** of the Bill seeks to effect the following amendments to section 154 of the Act:
- 2.1.1 Subsection (3) is amended to provide that—
- (a) no person shall before, during or at any stage after the conclusion of criminal proceedings, in any manner, including on any social media or electronic platform, publish any information which reveals or may reveal the identity of—
 - (i) an accused who is or was under the age of 18 years at the time of the alleged commission of an offence;
 - (ii) a witness who is or was under the age of 18 years at the time of the alleged commission of an offence; or
 - (iii) a person against whom an offence has allegedly been committed who is or was under the age of 18 years at the time of the alleged commission of the offence,
 unless the publication of such information is authorised in terms of subsection (3B); and
 - (b) the presiding judge or judicial officer at such criminal proceedings may authorise the publication of so much of any information relating to the proceedings as he or she may deem fit, if the publication thereof would in his or her opinion be just and equitable and in the interest of any particular person.
- 2.1.2 A new subsection (3A) is inserted to provide that a police official or a person who is authorised by the National Commissioner of the South African Police Service (the “SAPS”) may in certain circumstances publish information which reveals the identity of an accused, a witness, a person against whom an offence has allegedly been